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MISCELLANEOUS DOCUMENTS

OF THE

SENATE OF THE UNITED STATES

FOR THE

FIRST SESSION OF THE FORTY-NINTH CONGRESS.

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49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 47.

COMPILATION

OF

SENATE ELECTION CASES

FROM

1789 to 1885.

BY

GEORGE S. TAFT,

CLERK TO COMMITTEE ON PRIVILEGES AND ELECTIONS, U. S. SENATE.

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PREFACE.

Two compilations of Senate election cases have been made, one by Messrs. Clarke and Hall, consisting of cases from 1789 to 1834, and one by Mr. D. W. Bartlett, consisting of cases from 1834 to 1865. Each of these compilations made up but a small part of volumes containing in addition the contested-election cases in the House of Representatives for the respective periods. This volume contains the Senate cases from 1789 to December, 1885. I have not made use of the early compilations referred to, for the reason that, inasmuch as this volume is confined to Senate cases and so more limited in its scope, I have been able to take up more cases of minor importance than are reported in the early compilations, and to include in the important cases more of the matter comprising their history than is found in the reports of the same cases in the early compilations.

The volume contains not only contested cases, strictly speaking, but all cases in which the right to a seat of any person who has presented credentials has been questioned in such a manner that the Senate has deemed proper to investigate or to discuss the question.

The general plan in making up the cases has been to give the reports of committees, majority and minority, in all cases in which there were reports; transcripts from the journals of the proceedings of the Senate relating to them; and inserted references to the debates of each day. In those cases in which there were no reports, extracts from debates have usually been given. In a few of the early cases, in which the reported debates are brief, the whole debate is given. Each case is accompanied by a head-note stating the points in question and the action of the Senate.

I have separated into a class by themselves those cases involving the question of the power of governors of States to fill vacancies; and in connection with these cases is given a list, prepared from the credentials on file, of all the appointments of Senators by governors. It was my original purpose to make a separate class of the expulsion cases, and to make certain other divisions into classes, but as certain of the cases involve several different questions, it seemed better to arrange them all, with the exception of the class first referred to, chronologically.

An introduction contains extracts from the debates in the Federal convention of 1787, taken from the Madison Papers, on such parts of the Constitution as relate to the election and qualifications of Senators; extracts from the Constitution relating to the same; and the act of July 25, 1866, relating to the election of Senators.

GEORGE S. TAFT.

WASHINGTON, *December* 1, 1885.

INTRODUCTION.

EXTRACTS FROM THE DEBATES IN THE FEDERAL CONVENTION.

PORTIONS OF THE REPORT OF THE COMMITTEE OF DETAIL, MADE AUGUST 6, 1787, RELATING TO THE ELECTION AND QUALIFICATIONS OF SENATORS.

ART. V.—Sect. 1. The Senate of the United States shall be chosen by the legislatures of the several States. Each legislature shall choose two members. Vacancies may be supplied by the executive until the next meeting of the legislature. Each member shall have one vote.

Sect. 2. The Senators shall be chosen for six years; but immediately after the first election they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth year; so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the State for which he shall be chosen.

Sect. 4. The Senate shall choose its own President and other officers.

ART. VI.—Sect. 1. The times, and places, and manner of holding the elections of the members of each House shall be prescribed by the legislature of each State; but their provisions concerning them may, at any time, be altered by the Legislature of the United States.

Sect. 2. The Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House with regard to property as to the said legislature shall seem expedient.

Sect. 3. In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Sect. 4. Each House shall be the judge of the elections, returns, and qualifications of its own members.

Sect. 5. Freedom of speech and debate in the legislature shall not be impeached or questioned in any court or place out of the legislature; and the members of each House shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress and in going to and returning from it.

Sect. 6. Each House may determine the rules of its proceedings; may punish its members for disorderly behavior; and may expel a member.

Sect. 7. The House of Representatives, and the Senate when it shall be acting in a legislative capacity, shall keep a journal of their proceedings; and shall, from time to time, publish them; and the yeas and nays of the members of each House on any question shall, at the desire of one-fifth part of the members present, be entered on the Journal.

Sect. 8. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the ——— article.

Sect. 9. The members of each House shall be ineligible to, and incapable of holding, any office under the authority of the United States during the time for which they shall respectively be elected; and the members of the Senate shall be ineligible to, and incapable of holding, any such office for one year afterwards.

Sect. 10. The members of each House shall receive a compensation for their services, to be ascertained and paid by the State in which they shall be chosen.

DEBATES.

THURSDAY, *August* 9, 1787.

Article V, section 1, was then taken up.

Mr. Wilson objected to vacancies in the Senate being supplied by the executives of the States. It was unnecessary, as the legislatures will meet so frequently. It removes the appointment too far from the people, the executives in most of the States being elected by the legislatures. As he had always thought the appointment of the executive by the

legislative department wrong, so it was still more so that the executive should elect into the legislative department.

Mr. Randolph thought it necessary, in order to prevent inconvenient chasms in the Senate. In some States the legislatures meet but once a year. As the Senate will have more power, and consist of a smaller number than the other House, vacancies there will be of more consequence. The executives might be safely trusted, he thought, with the appointment for so short a time.

Mr. ELLSWORTH. It is only said that the executive *may* supply vacancies. When the legislative meeting happens to be near the power will not be exerted. As there will be but two members from a State vacancies may be of great moment.

Mr. WILLIAMSON. Senators may resign or not accept. This provision is therefore absolutely necessary.

On the question for striking out "vacancies shall be supplied by the executives"—

Pennsylvania, ay, 1; New Hampshire, Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia, no, 8; Maryland, divided.

Mr. Williamson moved to insert after "vacancies shall be supplied by the executives," the words, "unless other provisions shall be made by the legislature" (of the State).

Mr. ELLSWORTH. He was willing to trust the legislature or the executive of a State, but not to give the former a discretion to refer appointments for the Senate to whom they pleased.

On the question on Mr. Williamson's motion—

Maryland, North Carolina, South Carolina, Georgia, ay, 4; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, no, 6.

Mr. Madison, in order to prevent doubts whether resignations could be made by Senators, or whether they could refuse to accept, moved to strike out the words after "vacancies," and insert the words, "happening by refusals to accept, resignations, or otherwise, may be supplied by the legislature of the State in the representation of which such vacancies shall happen, or by the executive thereof until the next meeting of the legislature."

Mr. GOUVERNEUR MORRIS. This is absolutely necessary; otherwise, as members chosen, into the Senate are disqualified from being appointed to any office by section 9 of this article, it will be in the power of a legislature, by appointing a man a Senator against his consent, to deprive the United States of his services.

The motion of Mr. Madison was agreed to *nem. con.*

Mr. Randolph called for a division of the section, so as to leave a distinct question on the last words, "each member shall have one vote."

* * * * * * *

On the question on the first section, down to the last sentence—

New Hampshire, Connecticut, New Jersey, Delaware, Maryland, Virginia, Georgia, ay, 7; Massachusetts, Pennsylvania, North Carolina, no, 3; South Carolina, divided. (In the printed Journal, Pennsylvania, ay.)

* * * * * * *

Article V, section 2, was then taken up.

Mr. Gouverneur Morris moved to insert, after the words, "immediately after," the following: "they shall be assembled in consequence of," which was agreed to *nem. con.*, as was then the whole section.

Article V, section 3, was then taken up.

Mr. Gouverneur Morris moved to insert fourteen, instead of four years' citizenship as a qualification for Senators; urging the danger of admitting strangers into our public councils.

Mr. Pinckney seconded him.

Mr. Ellsworth was opposed to the section, as discouraging meritorious aliens from emigrating to this country.

Mr. PINCKNEY. As the Senate is to have the power of making treaties and managing our foreign affairs, there is peculiar danger and impropriety in opening its door to those who have foreign attachments. He quoted the jealousy of the Athenians on this subject, who made it death for any stranger to intrude his voice into their legislative proceedings.

Colonel Mason highly approved of the policy of the motion. Were it not that many not natives of this country had acquired great credit during the Revolution, he should be for restraining the eligibility into the Senate to natives.

Mr. Madison was not averse to some restrictions on this subject, but could never agree to the proposed amendment. He thought any restriction, however, in the *Constitution*, unnecessary and improper—unnecessary, because the national Legislature is to have the right of regulating naturalization, and can by virtue thereof fix different periods of residence as conditions of enjoying different privileges of citizenship; improper, be-

cause it will give a tincture of illiberality to the Constitution; because it will put it out of the power of the national Legislature, even by special acts of naturalization, to confer the full rank of citizens on meritorious strangers, and because it will discourage the most desirable class of people from emigrating to the United States. Should the proposed Constitution have the intended effect of giving stability and reputation to our Government, great numbers of respectable Europeans, men who love liberty and wish to partake its blessings, will be ready to transfer their fortunes hither. All such would feel the mortification of being marked with suspicious incapacitations, though they should not covet the public honors. He was not apprehensive that any dangerous number of strangers would be appointed by the State legislatures if they were left at liberty to do so, nor that foreign powers would make use of strangers as instruments for their purposes. Their bribes would be expended on men whose circumstances would rather stifle than excite jealousy and watchfulness in the public.

Mr. Butler was decidedly opposed to the admission of foreigners without a long residence in the country. They bring with them not only attachments to other countries, but ideas of government so distinct from ours that in every point of view they are dangerous. He acknowledged that if he himself had been called into public life within a short time after his coming to America, his foreign habits, opinions, and attachments would have rendered him an improper agent in public affairs. He mentioned the great strictness observed in Great Britain on this subject.

Dr. Franklin was not against a reasonable time, but should be very sorry to see anything like illiberality inserted in the Constitution. The people in Europe are friendly to this country. Even in the country with which we have been lately at war we have now and had during the war a great many friends, not only among the people at large, but in both houses of Parliament. In every other country in Europe all the people are our friends. We found in the course of the Revolution that many strangers served us faithfully, and that many natives took part against their country. When foreigners, after looking about for some other country in which they can obtain more happiness, give a preference to ours, it is a proof of attachment which ought to excite our confidence and affection.

Mr. Randolph did not know but it might be problematical whether emigrations to this country were, on the whole, useful, or not, but he could never agree to the motion for disabling them, for fourteen years, to participate in the public honors. He reminded the convention of the language held by our patriots during the Revolution, and the principles laid down in all our American constitutions. Many foreigners may have fixed their fortunes among us under the faith of these invitations. All persons under this description, with all others who would be affected by such a regulation, would enlist themselves under the banners of hostility to the proposed system. He would go as far as seven years, but no farther.

Mr. Wilson said he rose with feelings which were perhaps peculiar; mentioning the circumstance of his not being a native, and the possibility, if the ideas of some gentlemen should be pursued, of his being incapacitated from holding a place under the very Constitution which he had shared in the trust of making. He remarked the illiberal complexion which the motion would give to the system, and the effect which a good system would have in inviting meritorious foreigners among us, and the discouragement and mortification they must feel from the degrading discrimination now proposed. He had himself experienced this mortification. On his removal into Maryland he found himself, from defect of residence, under certain legal incapacities which never ceased to produce chagrin, though he assuredly did not desire, and would not have accepted, the offices to which they related. To be appointed to a place may be a matter of indifference. To be incapable of being appointed is a circumstance grating and mortifying.

Mr. Gouverneur Morris. The lesson we are taught is that we should be governed as much by our reason and as little by our feelings as possible. What is the language of reason on this subject? That we should not be polite at the expense of prudence. There was a moderation in all things. It is said that some tribes of Indians carried their hospitality so far as to offer to strangers their wives and daughters. Was this a proper model for us? He would admit them to his house, he would invite them to his table, would provide for them comfortable lodgings, but would not carry the complaisance so far as to bed them with his wife. He would let them worship at the same altar, but did not choose to make priests of them. He ran over the privileges which emigrants would enjoy among us, though they should be deprived of that of being eligible to the great offices of Government; observing that they exceeded the privileges allowed to foreigners in any part of the world; and that as every society, from a great nation down to a club, had the right of declaring the conditions on which new members should be admitted, there could be no room for complaint. As to those philosophical gentlemen, those citizens of the world, as they called themselves, he owned he did not wish to see any of them in our public councils. He would not trust them. The men who can shake off

their attachments to their own country can never love any other. These attachments are the wholesome prejudices which uphold all governments. Admit a Frenchman into your Senate, and he will study to increase the commerce of France; an Englishman, and he will feel an equal bias in favor of that of England. It has been said that the legislatures will not choose foreigners, at least improper ones. There was no knowing what legislatures would do. Some appointments made by them proved that everything ought to be apprehended from the cabals practiced on such occasions. He mentioned the the case of a foreigner who left this State in disgrace, and worked himself into an appointment from another to Congress.

On the question on the motion of Mr. Gouverneur Morris to insert fourteen in place of four years—

New Hampshire, New Jersey, South Carolina, Georgia, ay, 4; Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no, 7.

On the question for thirteen years, moved by Mr. Gouverneur Morris, it was negatived, as above.

On ten years, moved by General Pinckney, the votes were the same.

Dr. Franklin reminded the convention that it did not follow, from an omission to insert the restriction in the Constitution, that the persons in question would be actually chosen into the legislature.

Mr. RUTLEDGE. Seven years of citizenship have been required for the House of Representatives. Surely a longer time is requisite for the Senate, which will have more power.

Mr. WILLIAMSON. It is more necessary to guard the Senate in this case than the other House. Bribery and cabal can be more easily practiced in the choice of the Senate, which is to be made by the legislatures, composed of a few men, than of the House of Representatives, who will be chosen by the people.

Mr. Randolph will agree to nine years, with the expectation that it will be reduced to seven, if Mr. Wilson's motion to reconsider the vote fixing seven years for the House of Representatives should produce a reduction of that period.

On the question for nine years—

New Hampshire, New Jersey, Delaware, Virginia, South Carolina, Georgia, ay, 6 Massachusetts, Connecticut, Pennsylvania, Maryland, no, 4; North Carolina, divided.

The term "resident" was struck out, and "inhabitant" inserted *nem. con.*

Article V, section 3, as amended, was then agreed to *nem. con.* (198).

Article V, section 4, was agreed to *nem. con.*

Article VI, section 1, was then taken up.

Mr. Madison and Mr. Gouverneur Morris moved to strike out "each House," and to insert "the House of Representatives"; the right of the legislatures to regulate the times and places, &c., in the election of Senators being involved in the right of appointing them; which was disagreed to.

A division of the question being called for, it was taken on the first part down to "but their provisions concerning," &c.

The first part was agreed to *nem. con.*

Mr. Pinckney and Mr. Rutledge moved to strike out the remaining part, viz, "but their provisions concerning them may at any time be altered by the Legislature of the United States." The States, they contended, could and must be relied on in such cases.

Mr. GORHAM. It would be as improper to take this power from the national Legislature as to restrain the British Parliament from regulating the circumstances of elections, leaving this business to the counties themselves.

Mr. MADISON. The necessity of a general government supposes that the State legislatures will sometimes fail or refuse to consult the common interest at the expense of their local convenience or prejudices. The policy of referring the appointment of the House of Representatives to the people, and not to the legislatures of the States, supposes that the result will be somewhat influenced by the mode. This view of the question seems to decide that the legislatures of the States ought not to have the uncontrolled right of regulating the times, places, and manner of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot, or *viva voce*, should assemble at this place or that place, should be divided into districts or all meet at one place, should all vote for all the Representatives or all in a district vote for a number allotted to the district—these, and many other points, would depend on the legislatures, and might materially affect the appointments. Whenever the State legislatures had a favorite measure to carry they would take care so to mold their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the representation in the legislatures of particular States would produce a like inequality in their representation in the national Legislature, as it was presumable that the counties having the power in the former case would secure it to themselves in the latter. What danger could there

be in giving a controlling power to the national Legislature? Of whom was it to consist? First, of a Senate to be chosen by the State legislatures. If the latter, therefore, could be trusted, their representatives could not be dangerous. Secondly, of Representatives elected by the same people who elect the State legislatures. Surely, then, if confidence is due to the latter, it must be due to the former. It seems as improper in principle, though it might be less inconvenient in practice, to give to the State legislatures this great authority over the election of the Representatives of the people in the general legislature as it would be to give to the latter a like power over the election of their representatives in the State legislatures.

Mr. KING. If this power be not given to the national Legislature, their right of judging of the returns of their members may be frustrated. No probability has been suggested of its being abused by them. Although this scheme of erecting the General Government on the authority of the State legislatures has been fatal to the Federal establishment, it would seem as if many gentlemen still foster the dangerous idea.

Mr. Gouverneur Morris observed that the States might make false returns, and then make no provisions for new elections.

Mr. Sherman did not know but it might be best to retain the clause, though he had himself sufficient confidence in the State legislatures.

The motion of Mr. Pinckney and Mr. Rutledge did not prevail.

The word "respectively" was inserted after the word "State."

On the motion of Mr. Read, the word "their" was struck out, and "regulations in such cases" inserted, in place of "provisions concerning them"—the clause then reading, "but regulations, in each of the foregoing cases, may, at any time, be made or altered by the Legislature of the United States." This was meant to give the national Legislature a power not only to alter the provisions of the States, but to make regulations in case the States should fail or refuse altogether. Article VI, section 1, as thus amended, was agreed to *nem. con.* (199).

Adjourned.

FRIDAY, *August* 10, 1787.

[On the question of agreeing to section 2, Article VI, the ayes were 3, the noes 7. The debate is here omitted.]

[Section 3 of Article VI was amended and agreed to. The debate is here omitted.]

Sections 4 and 5 of Article VI were then agreed to *nem. con.*

Mr. Madison observed that the right of expulsion (Article VI, section 6) was too important to be exercised by a bare majority of a quorum, and in emergencies of faction might be dangerously abused. He moved that "with the concurrence of two-thirds" might be inserted between "may" and "expel."

Mr. Randolph and Mr. Mason approved the idea.

Mr. GOUVERNEUR MORRIS. This power may be safely trusted to a majority. To require more may produce abuses on the side of the minority. A few men, from factious motives, may keep in a member who ought to be expelled.

Mr. Carroll thought that the concurrence of two-thirds, at least, ought to be required.

On the question requiring two-thirds in cases of expelling a member, 10 States were in the affirmative; Pennsylvania, divided.

Article VI, section 6, as thus amended, was then agreed to *nem. con.* (202).

[Section 7 of Article VI was amended and agreed to. The debate is here omitted.]

SATURDAY, *August* 11, 1787.

[Section 8 of Article VI was amended and agreed to. The debate is here omitted.]

TUESDAY, *August* 14, 1787.

In convention.—Article VI, section 9, was taken up.

Mr. Pinckney argued that the making the members ineligible to offices was degrading to them, and the more improper as their election into the legislature implied that they had the confidence of the people; that it was inconvenient, because the Senate might be supposed to contain the fittest men. He hoped to see that body become a school of public ministers, a nursery of statesmen. That it was impolitic, because the legislature would cease to be a magnet to the first talents and abilities He moved to postpone the section, in order to take up the following proposition, viz:

"The members of each House shall be incapable of holding any office under the United States for which they, or any others for their benefit, receive any salary, fees, or emoluments of any kind; and the acceptance of such office shall vacate their seats respectively."

General Mifflin seconded the motion.

Colonel Mason ironically proposed to strike out the whole section, as a more effectual expedient for encouraging that exotic corruption which might not otherwise thrive so well in the American soil; for completing that aristocracy which was probably in the

contemplation of some among us; and for inviting into the legislative service those generous and benevolent characters who will do justice to each other's merit by carving out offices and rewards for it. In the present state of American morals and manners, few friends, it may be thought, will be lost to the plan by the opportunity of giving premiums to a mercenary and depraved ambition.

Mr. MERCER. It is a first principle in political science that whenever the rights of property are secured an aristocracy will grow out of it. Elective governments also necessarily become aristocratic, because the rulers, being few, can and will draw emoluments for themselves from the many. The governments of America will become aristocracies. They are so already. The public measures are calculated for the benefit of the governors, not of the people. The people are dissatisfied, and complain. They change their rulers, and the public measures are changed, but it is only a change of one scheme of emolument to the rulers for another. The people gain nothing by it but an addition of instability and uncertainty to their other evils. Governments can only be maintained by force or influence. The executive has not force; deprive him of influence by rendering the members of the legislature ineligible to executive offices, and he becomes a mere phantom of authority. The aristocratic part will not even let him in for a share of the plunder. The legislature must and will be composed of wealth and abilities, and the people will be governed by a junto. The executive ought to have a council, being members of both Houses. Without such an influence, the war will be between the aristocracy and the people. He wished it to be between the aristocracy and the executive. Nothing else can protect the people against those speculating legislatures which are now plundering them throughout the United States.

Mr. Gerry read a resolution of the legislature of Massachusetts, passed before the act of Congress recommending the convention, in which her deputies were instructed not to depart from the rotation established in the fifth article of the Confederation, nor to agree, in any case, to give to the members of Congress a capacity to hold offices under the Government. This, he said, was repealed, in consequence of the act of Congress, with which theState thought it proper to comply in an unqualified manner. The sense of the State, however, was still the same. He could not think, with Mr. Pinckney, that the di qualification was degrading. Confidence is the road to tyranny. As to ministers and ambassadors, few of them were necessary. It is the opinion of a great many that they ought to be discontinued on our part, that none may be sent among us, and that source of influence shut up. If the Senate were to appoint ambassadors, as seemed to be intended, they will multiply embassies for their own sakes. He was not so fond of those productions as to wish to establish nurseries for them. If they are once appointed, the House of Representatives will be obliged to provide salaries for them, whether they approve of the measures or not. If men will not serve in the legislature without a prospect of such offices, our situation is deplorable indeed. If our best citizens are actuated by such mercenary views, we had better choose a single despot at once. It will be more easy to satisfy the rapacity of one than of many. According to the idea of one gentleman (Mr Mercer), our Government, it seems, is to be a government of plunder. In that case, it certainly would be prudent to have but one, rather than many, to be employed in it. We cannot be too circumspect in the formation of this system. It will be examined on all sides, and with a very suspicious eye. The people who have been so lately in arms against Great Britain for their liberties will not easily give them up. He lamented the evils existing, at present, under our governments, but imputed them to the faults of those in office, not to the people. The misdeeds of the former will produce a critical attention to the opportunities afforded by the new system to like or greater abuses. As it now stands, it is as complete an aristocracy as ever was framed. If great powers should be given to the Senate, we shall be governed in reality by a junto, as has been apprehended. He remarked that it would be very differently constituted from Congress. In the first place, there would be but two deputies from each State; in Congress there may be seven, and are generally five. In the second place, they are chosen for six years; those of Congress annually. In the third place, they are not subject to recall; those of Congress are. And, finally, in Congress nine States are necessary for all great purposes; here eight persons will suffice. Is it to be presumed that the people will ever agree to such a system? He moved to render the members of the House of Representatives, as well as of the Senate, ineligible, not only during, but for one year after the expiration of, their terms. If it should be thought that this will injure the legislature, by keeping out of it men of abilities, who are willing to serve in other offices, it may be required, as a qualification for other offices, that the candidate shall have served a certain time in the legislature.

Mr. GOUVERNEUR MORRIS. Exclude the officers of the Army and Navy, and you form a band having a different interest from, and opposed to, the civil power. You stimulate them to despise and reproach those "talking lords who dare not face the foe." Let this spirit be roused at the end of a war, before your troops shall have laid down their arms,

and, though the civil authority be "intrenched in parchment to the teeth," they will cut their way to it. He was against rendering the members of the legislature ineligible to offices. He was for rendering them eligible again, after having vacated their seats by accepting office. Why should we not avail ourselves of their services if the people choose to give them their confidence? There can be little danger of corruption, either among the people or the legislatures, who are to be the electors. If they say, We see their merits, we honor the men, we choose to renew our confidence in them, have they not a right to give them a preference, and can they be properly abridged of it?

Mr. Williamson introduced his opposition to the motion by referring to the question concerning "money bills." That clause, he said, was dead. Its ghost, he was afraid, would, notwithstanding, haunt us. It had been a matter of conscience with him to insist on it as long as there was hope of retaining it. He had swallowed the vote of rejection with reluctance. He could not digest it. All that was said on the other side was that the restriction was not convenient. We have now got a house of lords which is to originate money bills. To avoid another inconvenience, we are to have a whole legislature at liberty to cut out offices for one another. He thought a self-denying ordinance for ourselves would be more proper. Bad as the Constitution has been made by expunging the restriction on the Senate concerning money bills, he did not wish to make it worse by expunging the present section. He had scarcely seen a single corrupt measure in the legislature of North Carolina which could not be traced up to office-hunting.

Mr. SHERMAN. The Constitution should lay as few temptations as possible in the way of those in power. Men of abilities will increase as the country grows more populous, and as the means of education are more diffused.

Mr. PINCKNEY. No State has rendered the members of the legislature ineligible to offices. In South Carolina the judges are eligible into the legislature. It cannot be supposed, then, that the motion will be offensive to the people. If the State constitutions should be revised, he believed, restrictions of this sort would be rather diminished than multiplied.

Mr. Wilson could not approve of the section as it stood, and could not give up his judgment to any supposed objections that might arise among the people. He considered himself as acting and responsible for the welfare of millions not immediately represented in this House. He had also asked himself the serious question, what he should say to his constituents in case they should call upon him to tell them why he sacrificed his own judgment in a case where they authorized him to exercise it. Were he to own to them that he sacrificed it in order to flatter their prejudices, he should dread the retort, "Did you suppose the people of Pennsylvania had not good sense enough to receive a good government?" Under this impression, he should certainly follow his own judgment, which disapproved of the section. He would remark, in addition to the objections urged against it, that, as one branch of the Legislature was to be appointed by the legislatures of the States, the other by the people of the States—as both are to be paid by the States, and to be appointable to State offices—nothing seemed to be wanting to prostrate the national Legislature but to render its members ineligible to national offices, and by that means take away its power of attracting those talents which were necessary to give weight to the Government, and to render it useful to the people. He was far from thinking the ambition which aspired to offices of dignity and trust an ignoble or culpable one. He was sure it was not politic to regard it in that light, or to withhold from it the prospect of those rewards which might engage it in the career of public service. He observed that the State of Pennsylvania, which had gone as far as any State into the policy of fettering power, had not rendered the members of the legislature ineligible to offices of Government.

Mr. Ellsworth did not think the mere postponement of the reward would be any material discouragement of merit. Ambitious minds will serve two years, or seven years, in the legislature, for the sake of qualifying themselves for other offices. This he thought a sufficient security for obtaining the services of the ablest men in the legislature; although, whilst members, they should be ineligible to public offices. Besides, merit will be most encouraged when most impartially rewarded. If rewards are to circulate only within the legislature, merit out of it will be discouraged.

Mr. Mercer was extremely anxious on this point. What led to the appointment of this convention? The corruption and mutability of the legislative councils of the States. If the plan does not remedy these, it will not recommend itself; and we shall not be able, in our private capacities, to support and enforce it; nor will the best part of our citizens exert themselves for the purpose. It is a great mistake to suppose that the paper we are to propose will govern the United States. It is the men whom it will bring into the government, and interest in maintaining it, that are to govern them. The paper will only mark out the mode and the form. Men are the substance, and must do the business. All government must be by force or influence. It is not the King of France, but 200,000 janizaries of power, that govern that kingdom. There will be no such force here; influ-

ence, then, must be substituted; and he would ask whether this could be done if the members of the legislature should be ineligible to offices of state; whether such a disqualification would not determine all the most influential men to stay at home, and prefer appointments within their respective States.

Mr. Wilson was by no means satisfied with the answer given by Mr. Ellsworth to the argument as to the discouragement of merit. The members must either go a second time into the legislature, and disqualify themselves, or say to their constituents, "We served you before only from the mercenary view of qualifying ourselves for offices, and, having answered this purpose, we do not choose to be again elected."

Mr. Gouverneur Morris put the case of a war, and the citizen most capable of conducting it happening to be a member of the legislature. What might have been the consequence of such a regulation at the commencement, or even in the course, of the late contest for our liberties?

On the question for postponing, in order to take up Mr. Pinckney's motion, it was lost.

New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, ay, 5; Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, no, 5; Georgia, divided.

Mr. Gouverneur Morris moved to insert, after "office," "except offices in the Army or Navy; but, in that case, their offices shall be vacated."

Mr. Broome seconds him.

Mr. Randolph had been, and should continue, uniformly opposed to the striking out of the clause, as opening a door for influence and corruption. No arguments had made any impression on him but those which related to the case of war, and a coexisting incapacity of the fittest commanders to be employed. He admitted great weight in these, and would agree to the exception proposed by Mr. Gouverneur Morris.

Mr. Butler and Mr. Pinckney urged a general postponement of Article VI, section 9, till it should be seen what powers would be vested in the Senate, when it would be more easy to judge of the expediency of allowing the officers of state to be chosen out of that body.

A general postponement was agreed to *nem con.* (207).

[Section 10 of Article VI was amended and agreed to. The debate is here omitted.]

SATURDAY, *September* 1, 1787.

In convention.—Mr. Brearly, from the committee of eleven, to which were referred yesterday the postponed part of the Constitution, and parts of reports not acted upon, made the following partial report:

"That in lieu of Article VI, section 9, the words following be inserted, viz: 'The members of each House shall be ineligible to any civil office under the authority of the United States, during the time for which they shall respectively be elected; and no person holding an office under the United States shall be a member of either House during his continuance in office.'"

MONDAY, *September* 3, 1787.

Mr. Pinckney moved to postpone the report of the committee of eleven (see the 1st of September), in order to take up the following:

"The members of each House shall be incapable of holding any office under the United States for which they, or any other for their benefit, receive any salary, fees, or emoluments of any kind, and the acceptance of such office shall vacate their seats respectively."

He was strenuously opposed to an ineligibility of members to office, and, therefore, wished to restrain the proposition to a mere incompatibility. He considered the eligibility of members of the legislature to the honorable offices of government as resembling the policy of the Romans, in making the temple of Virtue the road to the temple of Fame.

On this question—

Pennsylvania, North Carolina, ay, 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia, no, 8.

Mr. King moved to insert the word "created" before the word "during," in the report of the committee. This, he said, would exclude the members of the first legislature under the Constitution, as most of the offices would then be created.

Mr. Williamson seconded the motion. He did not see why members of the legislature should be ineligible to vacancies happening during the term of their election.

Mr. Sherman was for entirely incapacitating members of the legislature. He thought their eligibility to offices would give too much influence to the executive. He said the incapacity ought at least to be extended to cases where salaries should be increased, as well as created, during the term of the member. He mentioned, also, the expedient by which the restriction could be evaded; to wit, an existing officer might be translated to an office created, and a member of the legislature be then put into the office vacated.

Mr. Gouverneur Morris contended that the eligibility of members to office would lessen the influence of the executive. If they cannot be appointed themselves, the executive

will appoint their relations and friends, retaining the service and votes of the members for his purpose, in the legislature; whereas the appointment of the members deprives him of such an advantage.

Mr. Gerry thought the eligibility of members would have the effect of opening batteries against good officers, in order to drive them out and make way for members of the legislature.

Mr. Gorham was in favor of the amendment. Without it, we go farther than has been done in any of the States, or, indeed, any other country. The experience of the State governments, where there was no such ineligibility, proved that it was not necessary; on the contrary, that the eligibility was among the inducements for fit men to enter into the legislative service.

Mr. Randolph was inflexibly fixed against inviting men into the legislature by the prospect of being appointed to offices.

Mr. Baldwin remarked, that the example of the States was not applicable. The legislatures there are so numerous that an exclusion of their members would not leave proper men for offices. The case would be otherwise in the General Government.

Colonel MASON. Instead of excluding merit, the ineligibility will keep out corruption, by excluding office-hunters.

Mr. Wilson considered the exclusion of members of the legislature as increasing the influence of the executive, as observed by Mr. Gouverneur Morris; at the same time that it would diminish the general energy of the Gobernment. He said that the legal disqualification for office would be odious to those who did not wish for office, but did not wish either to be marked by so degrading a distinction.

Mr. PINCKNEY. The first legislature will be composed of the ablest men to be found. The States will select such to put the Government into operation. Should the report of the committee, or even the amendment, be agreed to, the great offices, even those of the judiciary department, which are to continue for life, must be filled, while those most capable of filling them will be under a disqualification.

On the question on Mr. King's motion—

New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, ay, 5; Connecticut, New Jersey, Maryland, South Carolina, Georgia, no, 5.

The amendment being thus lost, by the equal division of the States, Mr. Williamson moved to insert the words "created, or the emoluments whereof shall have been increased," before the word "during," in the report of the committee.

Mr. King seconded the motion, and on the question—

New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, ay, 5; Connecticut, New Jersey, Maryland, South Carolina, no, 4; Georgia, divided.

The last clause, rendering a seat in the legislature and an office incompatible, was agreed to *nem. con.*

The report, as amended and agreed to, is as follows:

"The members of each House shall be ineligible to any civil office under the authority of the United States, created, or the emoluments whereof shall have been increased, during the time for which they shall respectively be elected. And no person, holding any office under the United States, shall be a member of either House during his continuance in office. (251)

Adjourned.

[September 12, 1787, the Committee to Revise the Style, &c., reported the Constitution, in which the following changes were made in regard to the election and qualifications of Senators.]

FRIDAY, *September* 14, 1787.

Article I, section 3, the words "by lot"* were struck out *nem. con.*, on motion of Mr. Madison, that some rule might prevail in the rotation that would prevent both the members from the same State from going out at the same time.

"*Ex officio*" struck out of the same section, as superfluous, *nem. con.;* and "or affirmation," after "oath," inserted also unanimously.

Mr. Rutledge and Mr. Gouverneur Morris moved—"That persons impeached be suspended from their offices until they be tried and acquitted."

Mr. MADISON. The President is made too dependent already on the Legislature by the power of one branch to try him in consequence of an impeachment by the other. This intermediate suspension will put him in the power of one branch only. They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate.

Mr. King concurred in the opposition to the amendment.

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*"By lot" had been reinstated from the report of the committee of five, made on the 6th of August, as a correction of the printed report by the committee of style, &c.

On the question to agree to it—

Connecticut, South Carolina, Georgia, ay, 3; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no, 8.

Article I, section 4, "except as to the places of choosing Senators," was added, *nem. con.*, to the end of the first clause, in order to exempt the seats of government in the States from the power of Congress.

Article I, section 5—

"Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy."

Colonel Mason and Mr. Gerry moved to insert, after the word "parts," the words "of the proceedings of the Senate," so as to require publication of all the proceedings of the House of Representatives.

It was intimated, on the other side, that cases might arise where secrecy might be necessary in both Houses. Measures preparatory to a declaration of war, in which the House of Representatives was to concur, were instanced.

On the question, it passed in the negative.

Pennsylvania, Maryland, North Carolina, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Virginia, Georgia, no, 7; South Carolina, divided.

Mr. Baldwin observed that the clause, Article I, section 6, declaring that no member of Congress, "during the time for which he was elected, shall be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time," would not extend to offices created by the Constitution, and the salaries of which would be created, not increased, by Congress at their first session. The members of the first Congress, consequently, might evade the disqualification in this instance. He was neither seconded nor opposed, nor did anything further pass on the subject.

EXTRACTS FROM THE CONSTITUTION.

ARTICLE I.

SECTION. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than the removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a member of either House during his Continuance in Office.

ARTICLE XIV, OF THE AMENDMENTS.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

ACT OF JULY 25, 1866.

REVISED STATUTES, TITLE II, CHAPTER 1.

SEC. 14. The legislature of each State which is chosen next preceding the expiration of the time for which any Senator was elected to represent such State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress.

SEC. 15. Such election shall be conducted in the following manner: Each house shall openly, by a viva voce vote of each member present, name one person for Senator in Congress from such State, and the name of the person so voted for, who receives a majority of the whole number of votes cast in each house, shall be entered on the journal of that house by the clerk or secretary thereof; or if either house fails to give such majority to any person on that day, the fact shall be entered on the journal. At twelve o'clock meridian of the day following that on which proceedings are required to take place as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person has received a majority of all the votes in each house, he shall be declared duly elected Senator. But if the same person has not received a majority of the votes in each house, or if either house has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose, by a viva voce vote of each member present, a person for Senator, and the person who receives a majority of all the votes of the joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected. If no person receives such majority on the first day, the joint assembly shall meet at twelve o'clock meridian of each succeeding day during the session of the legislature, and shall take at least one vote, until a Senator is elected.

SEC. 16. Whenever on the meeting of the legislature of any State a vacancy exists in the representation of such State in the Senate, the legislature shall proceed, on the second Tuesday after meeting and organization, to elect a person to fill such vacancy, in the manner prescribed in the preceding section for the election of a Senator for a full term.

SEC. 17. Whenever during the session of the legislature of any State a vacancy occurs in the representation of such State in the Senate, similar proceedings to fill such vacancy shall be had on the second Tuesday after the legislature has organized and has notice of such vacancy.

SEC. 18. It shall be the duty of the executive of the State from which any Senator has been chosen, to certify his election, under the seal of the State, to the President of the Senate of the United States.

SEC. 19. The certificate mentioned in the preceding section shall be countersigned by the secretary of state of the State.

COMMITTEE ON PRIVILEGES AND ELECTIONS.

The Committee on Privileges and Elections was formed in the first session of the Forty-second Congress.

SENATE ELECTION CASES.

I.

CASES CONCERNING THE POWER OF EXECUTIVES OF STATES TO FILL VACANCIES.

[Third Congress—First session.]

KENSEY JOHNS,

of Delaware.

George Read, a Senator from Delaware, resigned his seat in December, 1793, during the recess of the legislature of said State. The legislature met in January and adjourned in February, 1794. On the 19th of March, Kensey Johns was appointed by the governor of said State to fill the vacancy. It was determined that Mr. Johns was not entitled to his seat, a session of the legislature having intervened between the resignation of Mr. Read and the appointment of Mr. Johns.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Annals of Congress, 3d Cong., 1793-'95, within pages 73-78.

MONDAY, *March* 24, 1794.

Kensey Johns appeared and produced his credentials of an appointment by the governor of the State of Delaware as a Senator of the United States; which were read.

Whereupon it was moved that they be referred to the consideration of the Committee of Elections before the said Kensey Johns should be permitted to qualify, who are directed to report thereon; and it passed in the affirmative—yeas 13, nays 12; as follows:

YEAS—Messrs. Bradley, Brown, Burr, Edwards, Gunn, Hawkins, Jackson, Langdon, Livermore, Martin, Monroe, Robinson, and Taylor.

NAYS—Messrs. Bradford, Cabot, Ellsworth, Foster, Frelinghuysen, Izard, Mitchell, Morris, Potts, Rutherfurd, Strong, and Vining.

WEDNESDAY, *March* 26, 1794.

Mr. Bradley reported from the Committee on Elections, to whom were referred the credentials of Kensey Johns, appointed by the executive of the State of Delaware a Senator of the United States in the place of George Read, resigned.

Ordered, That the report lie for consideration.

THURSDAY, *March* 27, 1794.

The Senate proceeded to the consideration of the report of the Committee of Elections, to whom were referred the credentials of Kensey Johns, appointed by the executive of the State of Delaware to be a Senator of the United States.

On motion that the report be recommitted, it passed in the negative; and,

After progress, it was

Ordered, That the further consideration of this report be postponed until to-morrow.

FRIDAY, *March* 28, 1794.

The Senate resumed the consideration of the report of the Committee of Elections, to whom were referred the credentials of Kensey Johns, appointed by the executive of the State of Delaware to be a Senator of the United States; which report is as follows:

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Bradley, Ellsworth, Mitchell, Rutherford, Brown, Livermore, and Taylor.]

The Committee of Elections, to whom were referred the credentials of an appointment by the governor of the State of Delaware of Kensey Johns as a Senator of the United States, having had the same under consideration, report—

That George Read, a Senator for the State of Delaware, resigned his seat upon the 18th day of December, 1793, and during the recess of the legislature of said State.

That the legislature of the said State met in January and adjourned in February, 1794.

That upon the 19th day of March, and subsequent to the adjournment of the said legislature, Kensey Johns was appointed by the governor of said State to fill the vacancy occasioned by the resignation aforesaid.

Whereupon the committee submit the following resolution:

Resolved, That Kensey Johns, appointed by the governor of the State of Delaware as a Senator of the United States for said State, is not entitled to a seat in the Senate of the United States, a session of the legislature of the said State having intervened between the resignation of the said George Read and the appointment of the said Kensey Johns.

On the question to agree to this report, it passed in the affirmative—yeas 20, nays 7; as follows:

YEAS—Messrs. Bradford, Bradley, Brown, Burr, Butler, Cabot, Edwards, Ellsworth, Frelinghuysen, Gunn, Hawkins, Jackson, King, Langdon, Livermore, Martin, Mitchell, Monroe, Robinson, and Taylor.

NAYS—Messrs. Foster, Izard, Morris, Potts, Rutherfurd, Strong, and Vining.

Resolved, That an attested copy of the resolution of the Senate on the appointment of Kensey Johns to be a Senator of the United States be transmitted by the President of the Senate to the executive of the State of Delaware.

[Special session of Senate, March, 1801.]

URIAH TRACY,

Senator from Connecticut from December 6, 1796, *till his death, July* 19, 1807.

Mr. Tracy's first term expired March 3, 1801. On March 4, at a special session of the Senate, he produced credentials of appointment by the governor of Connecticut to fill the vacancy. It appears from the credentials, which are dated February 20, 1801, that the legislature of the State was not then in session, and that he was appointed "from the 3d of March next until the next meeting of the legislature of said State." Exception being taken to his credentials he was admitted by a vote of 13 yeas to 10 nays. Under these credentials he occupied his seat during the special session of the Senate, March 4 and 5. In May following he was elected by the legislature, and on December 6, the second day of the next session of Congress, he produced his credentials of election and the oath was administered.

The brief history of the case here given, taken from the Annals of Congress, 6th Cong., 1799–1801, page 763, contains all that there is relating to it, neither the debate referred to nor the grounds of the decision being given.

WEDNESDAY, *March* 4, 1801.

Exception being taken to the credentials of the Hon. Mr. Tracy, a Senator from the State of Connecticut, a debate ensued; and,

On motion that he be admitted to take the oath required by the Constitution, it passed in the affirmative—yeas 13, nays 10; as follows:

YEAS—Messrs. Chipman, Dayton, Dwight Foster, Hillhouse, Howard, Livermore, J. Mason, Morris, Ogden, Ross, Sheafe, Wells, and White.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Brown, Cocke, S. T. Mason, Muhlenberg, Nicholas, Pinckney, and Stone.

[Eleventh Congress—First session.]

SAMUEL SMITH,

Senator from Maryland from March 4, 1803, *to March* 3, 1815, *and from December* 17, 1822, *to March* 3, 1833.

On the expiration of Mr. Smith's first term, viz, March 3, 1809, the legislature of Maryland not having elected his successor, and not then being in session, he was appointed by the governor on March 4 to fill the vacancy until the next meeting of the legislature, which would take place on the 5th of June next. Thereupon Mr. Smith addressed a letter to the Senate, setting forth these facts, and submitting to its determination the question whether the appointment would or would not cease on the first day of the meeting of the legislature. It was determined that he was entitled to hold his seat in the Senate during the session of the legislature, unless the legislature should fill such vacancy by the appointment of a Senator, and the Senate be officially informed thereof. Under these credentials Mr. Smith held his seat during the special session of the Senate March 4-7, 1809, and during the first session of the Eleventh Congress (May 22 to June 28, 1809). On the 16th of November following he was elected by the legislature, and on December 4, in the next session of Congress, he produced his credentials of election and the oath was administered.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Annals of Congress, 11th Cong., 1st and 2d sess., vol. I, 1809-'10, within pages 15-25.

MONDAY, *May* 29, 1809.

The President laid before the Senate a letter from Mr. Smith, of Maryland, stating that being appointed by the executive of that State a Senator, in conformity with the Constitution, until the next meeting of the legislature, which will take place on the 5th day of June next, he submits to the determination of the Senate the question whether an appointment under the executive of Maryland to represent that State in the Senate of the United States will or will not cease on the first day of the meeting of the legislature thereof? And the letter was read; and,

After debate, it was agreed that the further consideration thereof be postponed until to-morrow.

TUESDAY, *May* 30, 1809.

The Senate resumed the consideration of the letter from Mr. Smith, of Maryland, communicated yesterday; and,

On motion of Mr. Giles, the further consideration thereof was postponed to the 5th of June next.

TUESDAY, *June* 6, 1809.

The Senate resumed the consideration of the letter of Mr. Smith, a Senator from the State of Maryland; and

Mr. Giles submitted a resolution, which was amended, and is as follows:

"*Resolved*, That the Hon. Samuel Smith, a Senator appointed by the executive of the State of Maryland to fill the vacancy which happened in the office of Senator for that State, is entitled to hold his seat in the Senate of the United States during the session of the Legislature of Maryland, which, by the proclamation of the governor of said State, was to commence on the 5th day of the present month of June; unless said legislature shall fill such vacancy by the appointment of a Senator, and this Senate be officially informed thereof."

On motion by Mr. Anderson to amend the motion by striking out all after the word "resolved," and inserting:

"That any Senator of this body who holds a seat under an executive appointment cannot, according to the provisions of the Constitution of the United States, be entitled to continue to hold his seat as a member of this body after the meeting of the legislature of the State from which such Senator may be a member,"

And a division of the motion for amendment was called for, and the question having been taken on striking out, it passed in the negative; and,

The motion for amendment having been lost, the original motion was agreed to—yeas 19, nays 6; as follows:

YEAS—Messrs. Anderson, Brent, Franklin, Gaillard, German, Giles, Gilman, Goodrich, Griswold, Hillhouse, Lambert, Mathewson, Meigs, Pope, Robinson, Smith of New York, Thruston, White, and Whiteside.

NAYS—Messrs. Bradley, Leib, Lloyd, Parker, Pickering, and Turner.

[Special session of Senate, March, 1825.]

JAMES LANMAN,

Senator from Connecticut from March 4, 1819, *to March* 3, 1825.

Mr. Lanman's term expired March 3, 1825. March 4, 1825, he produced credentials of appointment by the governor to fill the vacancy. The credentials of appointment were dated February 8, 1825, and set forth that the President of the United States had desired the Senate to convene on the 4th day of March, and had caused official notice of that fact to be communicated to the governor. They were "to take effect immediately after the 3d day of March, 1825, and to continue until the next meeting of the legislature." Exception being taken to the credentials, they were referred to a committee, who reported the facts as above. On motion that he be admitted, it was determined in the negative, the grounds on which the Senate proceeded not being given.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 2d sess. 18th Cong., 1824-'25, within pages 272-283. A slightly fuller sketch of the debate than that here given may be found in Niles's Weekly Register, vol. 28, pages 31, 32.

FRIDAY, *March* 4, 1825.

The President laid before the Senate a letter from the Hon. James Lanman, inclosing the credentials of his appointment by the governor of Connecticut as a Senator of the United States, "to take effect immediately after the 3d day of March, 1825, and to continue until the next meeting of the legislature," and expressing his readiness to receive the usual qualifications.

The letter and credentials were read.

On motion by Mr. Holmes, of Maine, that Mr. Lanman be admitted to take the oath required by the Constitution, a debate ensued, and,

On motion,

Ordered, That the further consideration thereof be postponed until to-morrow.

SATURDAY, *March* 5, 1825.

The Senate resumed the consideration of the motion of yesterday, "that Mr. Lanman be admitted to take the oath required by the Constitution," and,

On motion by Mr. Eaton,

Ordered, That said motion, together with the credentials of Mr. Lanman, be referred to a select committee, to consist of three members, to consider and report thereon.

Mr. Eaton, Mr. Edwards, and Mr. Tazewell were appointed the committee.

Mr. Van Buren submitted the following motion for consideration:

"*Resolved*, That the Hon. James Lanman have leave to be heard at the bar of the Senate on the question as to his right to a seat therein under an appointment by the executive of Connecticut."

MONDAY, *March* 7, 1825.

Mr. Eaton, from the select committee to whom was referred, on the 5th instant, the motion "that Mr. Lanman be admitted to take the oath required by the Constitution," together with the credentials of Mr. Lanman, submitted the following report, which was read:

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Eaton, Edwards, and Tazewell.]

That Mr. Lanman's term of service in the Senate expired on the 3d March. On the 4th, he presented to the Senate a certificate, regularly and properly authenticated, from Oliver Wolcott, governor of the State of Connecticut, setting forth that the President of the United States had desired the Senate to convene on the 4th day of March, and had caused official notice of that fact to be communicated to him.

The certificate of appointment is dated the 8th of February, 1825, subsequent to the time of notification to him by the President. The certificate further recites that, at the time of its execution, the legislature of the State was not in session, and would not be until the month of May.

The committee have looked into the Journals of the Senate to discover if they could find any authority or decision by them on this question; and the following have been found recorded:

"On the 27th of April, 1797, William Cocke was appointed a Senator from that State

by the governor of Tennessee; his term of service having expired on the 3d of the preceding March, and on the 15th of May took his seat, and was qualified.

"On the 3d of March, 1801, the seat of Uriah Tracy became vacant, the time for which he had been elected having expired. On the 20th of February preceding the governor of Connecticut reappointed him a Senator, and, in pursuance thereof, he was qualified and took his seat.

"Joseph Anderson, a Senator from Tennessee, was appointed by the governor a member of the Senate on the 6th of February, 1809, and on the 4th of March after took his seat; the period for which he had been elected having on the preceding day expired.

"John Williams, of Tennessee, on the 20th of January, 1817, was appointed a Senator in Congress, to take his seat on the 4th of March, when the term for which he had been elected would expire. Mr. Williams appeared, was qualified, and took his seat."

In none of these cases does it appear that there was any objection made, or question raised, except in 1801, in the case of Mr Tracy, when the vote was 13 for and 10 against the right of the member to take his seat. Those are the only analogous cases the committee have been able to find.

By reference to the statute laws of Connecticut the committee find that in that State there is a law upon this subject which is in the following words: "Whenever any vacancy shall happen in the representation of this State in the Senate of the United States, by the expiration of the term of service of a Senator, or by resignation or otherwise, the general assembly, if then in session, shall, by a concurrent vote of the senate and house of representatives, proceed to fill said vacancy by a new election; and in case such vacancy shall happen in the recess of the general assembly, the governor shall appoint some person to fill the same until the next meeting of the general assembly."

The Senate proceeded to consider the motion of the 5th instant, that the Hon. James Lanman have leave to be heard at the bar of the Senate on the question as to his right to a seat therein; and agreed thereto.

Mr. Edwards submitted the following motion; which was read:

"*Resolved*, That the Hon. James Lanman, appointed a Senator by the governor of the State of Connecticut, be now admitted to the oath required by the Constitution."

And on the question to agree thereto, it was determined in the negative—yeas 18, nays 23.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bell, Bouligny, Chase, Clayton, D'Wolf, Edwards, Harrison, Hendricks, Johnston of Louisiana, Kane, Knight, Lloyd of Massachusetts, M'Ilvaine, Mills, Noble, Rowan, Seymour, and Thomas.

Those who voted in the negative are Messrs. Barton, Benton, Berrien, Branch, Chandler, Dickerson, Eaton, Findlay, Gaillard, Hayne, Holmes of Maine, Holmes of Mississippi, Jackson, King of Alabama, Lloyd of Maryland, Macon, Marks, Ruggles, Smith, Tazewell, Van Buren, Van Dyke, and Williams.

[Special session of Senate, March, 1837.]

AMBROSE H. SEVIER,

Senator from Arkansas from December 5, 1836, *to March* 4, 1837, *and from March* 8, 1837, *till he resigned, March* 15, 1848.

The State of Arkansas was admitted into the Union in June, 1836. In October, 1836, the legislature of that State elected Ambrose H. Sevier and William S. Fulton Senators. On the allotment of the Arkansas Senators to their respective classes, as required by the third section of the first article of the Constitution, Mr. Sevier was placed in the class of Senators whose term of service expired on the 3d of March, 1837. The legislature of Arkansas had no opportunity to fill the vacancy, not having been in session after the result of the allotment was known in that State. January 17, 1837, the governor of Arkansas appointed Mr. Sevier to fill the vacancy which would take place on the 3d of March. At the special session of the Senate in March the credentials were referred to the Committee on the Judiciary. The committee reported that as the time when Mr. Sevier was to go out of office was decided by lot, and as the legislature, not being in session after this decision, could not supply the vacancy, it came "fairly within the provision of the Constitution contained in the third section of the first article, which declares, 'and if vacancies happen by resignation or otherwise,' &c."; and reported a resolution that the oath required by the Constitution be administered to him. March 8 this resolution passed and Mr. Sevier took his seat. No debates on the adoption of the resolution are found. Under these credentials Mr. Sevier held the seat during the remainder of the special session March 8-10, during the first session of the Twenty-fifth Congress, September 4 to October 16, and from December 4-13 of the second session, when he presented credentials of election (which had taken place November 7) for term ending March 3, 1843, and the oath was administered.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Congressional Globe, 2d sess. 24th Cong., pages 1 and 209, and during the special session from the Senate Journal, 2d sess. 24th Cong., 1836-'37, within pages 358-367. No fuller account of the proceedings during the special session than that taken from the Senate Journal is found.

MONDAY, *December* 5, 1836.

Mr. Benton presented the credentials of the Hon. A. H. Sevier and W. S. Fulton, Senators-elect from the State of Arkansas. The Vice-President administered the oath prescribed by the Constitution of the United States, and they took their seats.

On motion by Mr. Benton,

Resolved, That the Secretary put into the ballot-box three papers of equal size, numbered 1, 2, 3. Each of the Senators from the State of Arkansas draw out one paper. No. 1, if drawn, shall entitle the member to be placed in the class of Senators whose terms of service will expire the 3d day of March, 1837; No. 2 in the class whose terms will expire the 3d day of March, 1839; and No. 3 in the class whose terms will expire on the 3d day of March, 1841.

In pursuance of the above order, Mr. Sevier drew from the ballot-box No. 1, and Mr. Fulton No. 3. Therefore Mr. Sevier's term expires on the 3d of March, 1837, and Mr. Fulton's on the 3d of March, 1841.

MONDAY, *February* 27, 1837.

Mr. Fulton presented the credentials of the Hon. Ambrose H. Sevier, appointed a Senator by the governor of Arkansas to fill the vacancy that will occur on the 4th of March next, for the term of six years.

Mr. Webster expressed his doubts as to the constitutionality of making an appointment, no vacancy having occurred.

Mr. Fulton remarked that he and his colleague were aware of this difficulty; but he (Mr. F.), supposing that it would be a matter for the next Senate to act upon, presented the credentials under that impression.

The Chair said that it was not for the Senate to consider the qualifications of Senators elected to the next Congress. That Congress must act on this subject.

Mr. Sevier said that he had very great doubt of the legality of the appointment, and did not at all doubt the patriotic motives which influenced the Senator from Massachusetts in expressing himself as he had done. Mr. S. cared not how the matter should be decided, one way or the other.

Mr. Webster was sure that the honorable Senator was very indifferent as to how the question might be decided, and would give him credit as to his motives in intimating that there might be some irregularity in the proceeding.

Mr. Sevier expressed himself quite satisfied with the course pursued by the honorable Senator from Massachusetts.

SATURDAY, *March* 4, 1837.

The Hon. Ambrose H. Sevier, whose credentials were read the 27th February, 1837, appearing for the purpose of being qualified,

On motion by Mr. King, of Alabama,

Ordered, That the further consideration of the same be postponed to Monday next.

MONDAY, *March* 6, 1837.

The Senate resumed the consideration of the credentials of the Hon. Ambrose H. Sevier, and,

On motion by Mr. Fulton,

Ordered, That they be referred to the Committee on the Judiciary.

TUESDAY, *March* 7, 1837.

Mr. Grundy, from the Committee on the Judiciary, to whom were referred the credentials of the Hon. Ambrose H. Sevier, submitted the following report:

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Grundy (chairman), Crittenden, Morris, King of Georgia, and Wall.]

The Committee on the Judiciary, to whom was referred the credentials of the Hon. Ambrose H. Sevier, have had the same under consideration, and submit the following report:

At the last session of Congress the State of Arkansas was admitted into the Union, and the legislature of that State, in the month of October, 1836, elected Ambrose H. Sevier and William S. Fulton Senators to represent the State in the Senate of the United States. It also appears that upon the allotment of the said Arkansas Senators to their respective classes, as required by the third section of the first article of the Constitution, the said Ambrose H. Sevier was placed in the class of Senators whose term of service expired on the 3d day of March, 1837, and that the legislature of Arkansas have had no opportunity of filling the vacancy, not having been in session since the fact that the vacancy would occur could have been known in that State. The governor of the State of Arkansas on the 17th day of January last commissioned the said Sevier as Senator to fill the vacancy which would take place on the 3d of March. Upon this state of the case the question is presented whether the said Ambrose H. Sevier is entitled to his seat under the appointment made by the executive of the State of Arkansas? In looking into the practice of the Senate upon the subject of executive appointments, no case like the present has been found. Several cases have occurred in which the executives of different States in anticipation of the expiration of the regular term of service have appointed Senators (the legislatures not being in session), and in all of these cases the Senators thus appointed were admitted to their seats, until the called session of the Senate in March, 1825, when Mr. Lanman, of Connecticut, whose term of service expired on the 3d of March, 1825, produced his credentials from the governor of Connecticut and the Senate decided he was not entitled to his seat by a vote of 23 to 18.

This decision seems to have been generally acquiesced in since that time; nor is it intended by the committee to call its correctness in question. The principle asserted in that case is that the legislature of a State by making elections themselves shall provide for all vacancies which must occur at stated and known periods; and that the expiration of a regular term of service is not such a contingency as is embraced in the second section of the first article of the Constitution.

The case now under consideration is wholly different in principle. The time when Mr. Sevier was to go out of office under his election made by the legislature of Arkansas was decided by lot, agreeably to the provisions of the Constitution on that subject. After the decision thus made, the legislature of Arkansas, not being in session, could not supply the vacancy; and the case, in the opinion of the committee, comes fairly within the provision of the Constitution contained in the third section of the first article, which declares, "and if vacancies happen by resignation or otherwise during the recess of the legislature of any State the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies."

The committee are of opinion that Mr. Sevier is entitled to his seat under the executive appointment of the 17th of January, 1837, and therefore submit the following resolution:

Resolved, That the Hon. Ambrose H. Sevier, appointed a Senator by the governor of the State of Arkansas, have the oath required by the Constitution administered to him.

The Senate proceeded to consider the resolution; and,

On motion by Mr. King, of Georgia,

Ordered, That it lie on the table, and that the report be printed.

WEDNESDAY, *March* 8, 1837.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary in relation to the appointment of the Hon. Ambrose H. Sevier; and,

On the question, "Will the Senate agree to the resolution?" it was determined in the affirmative—yeas 26, nays 19.

On motion by Mr. Grundy, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allen, Benton, Brown, Buchanan, Clayton, Cuthbert, Fulton, Grundy, Hubbard, Linn, Lyon, Nicholas, Niles, Norvell, Pierce, Preston, Rives, Robinson, Ruggles, Smith of Connecticut, Tipton, Walker, Wall, White, Wright, and Young.

Those who voted in the negative are Messrs. Bayard, Black, Clay, Crittenden, Davis, Kent, King of Alabama, King of Georgia, Knight, McKean, Morris, Mouton, Prentiss, Robbins, Smith of Indiana, Southard, Swift, Webster, and Williams.

Whereupon the oath prescribed by law was administered to the Hon. Mr. Sevier, and he took his seat in the Senate.

[Thirty-second Congress—Second session.]

ROBERT C. WINTHROP,

Senator from Massachusetts from July 30, 1850, *to February* 7, 1851.

Mr. Winthrop was appointed July 27, 1850, to fill a vacancy happening in the Senate by the resignation of Daniel Webster. February 1, 1851, Robert Rantoul was elected by the legislature to fill the unexpired term. February 4, Mr. Rantoul not having appeared to take the seat, Mr. Winthrop offered a resolution, which was agreed to, "that the Committee on the Judiciary inquire and report to the Senate, as early as practicable, at what period the term of service of a Senator appointed by the executive of a State during the recess of the legislature thereof rightfully expires." The committee reported that a person so appointed had a right to the seat until the legislature, at its next meeting, should elect a person to fill the unexpired term, and the person elected should accept, and his acceptance appear to the Senate; that presentation of credentials implied acceptance; that these views were sustained by precedents. The report was debated, but no action taken, the whole subject being laid on the table. Mr. Winthrop vacated the seat February 7, 1851, when Mr. Rantoul's credentials were presented.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 2d sess. 31st Cong., 1850-'51, with the report of the committee from Senate Reports, 2d sess. 31st Cong., 1850-'51, No. 269.

The debates on the case are found in the Congressional Globe, 2d sess. 31st Cong., vol. 23, within pages 425-478, special references to which are inserted below.

TUESDAY, *February* 4, 1851.

Mr. Winthrop submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Committee on the Judiciary inquire and report to the Senate, as early as practicable, at what period the term of service of a Senator appointed by the executive of a State during the recess of the legislature thereof rightfully expires."

[Mr. Winthrop accompanied the introduction of the resolution by some remarks on the practice of the Senate in regard to the subject, expressing a desire in his own case to hold his seat just so long as he was constitutionally entitled thereto and no longer. These remarks are found on pages 425, 426 of the Congressional Globe referred to.]

WEDNESDAY, *February* 5, 1851.

Mr. Butler, from the Committee on the Judiciary, consisting of Messrs, Butler (chairman), Berrien, Bradbury, Dayton, and Downs, who were instructed by a resolution of the Senate to inquire and report at what period the term of service of a Senator appointed by the executive of a State during the recess of the legislature thereof rightfully expires, submitted a report, which was ordered to be printed.

REPORT OF COMMITTEE.

IN SENATE OF THE UNITED STATES.

FEBRUARY 5, 1851.—Submitted, and ordered to be printed.

Mr. Butler made the following report:

The Committee on the Judiciary, to whom was referred a resolution directing said committee to inquire and report at what period the term of service of a Senator appointed by the executive of a State during the recess of the legislature thereof rightfully expires, have had the same under consideration, and report:

The question presented by the resolution turns mainly upon the construction of the clause of Article I, section 2, of the Constitution of the United States, which provides that "if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall fill such vacancies."

Your committee are of the opinion that the sitting member under executive appointment has a right to occupy his seat until the vacancy shall be filled by the legislature of the State of which he is a Senator during the next meeting thereof. To fill such vacancy it is not only necessary to make an election, but that the person elected shall accept the appointment. And your committee are further of the opinion that such acceptance should appear by the presentation to the Senate of the credentials of the member-elect, or other official information of the fact—at which time the office of the sitting

member terminates. When the member-elect is present and ready to qualify his express acceptance is at once made known; and when his credentials are presented in his absence his acceptance may be fairly implied.

These general views are sustained by precedents. An early one may be found in the Senate Journal of 1809, page 381, where the question was settled, after debate, by the adoption on the 6th of June of the following resolution:

"*Resolved*, That the Hon. Samuel Smith, a Senator appointed by the executive of Maryland to fill the vacancy which happened in the office of Senator for that State, is entitled to hold his seat in the Senate of the United States during the session of the legislature of Maryland, which, by the proclamation of the governor of said State, was to commence on the 5th day of the present month of June, unless said legislature shall fill such vacancy by the appointment of a Senator, and this Senate be officially informed thereof."

The precedent in this case has been uniformly followed from that time to the present in the many cases that have arisen involving the same question.

[A list of precedents accompanying the report is found annexed to the report in the volume of Senate Reports referred to in the head-note. It is not printed here, as all the cases are included in the list of appointments on page 48 of this book.]

FRIDAY, *February* 7, 1851.

Mr. Winthrop presented the credentials of the Hon. Robert Rantoul, jr., elected a Senator by the legislature of the Commonwealth of Massachusetts to fill the vacancy occasioned by the resignation of the Hon. Daniel Webster; which were read.

[Mr. Winthrop stated that he presented the credentials "with the understanding that, agreeably to the recent report of the Judiciary Committee, the presentation of the credentials would imply an acceptance on the part of the Senator-elect, so far forth at least as to terminate the office of the sitting member." These remarks are found on pages 459, 460 of the Congressional Globe referred to.]

Mr. Clay moved to take up the report of the committee with the view of deciding whether the retiring member is entitled to his seat.*

[Some remarks on the report are found on page 460 of the Congressional Globe referred to.]

Mr. Davis, of Massachusetts, submitted the following resolution; which was considered by unanimous consent:

"*Resolved*, That a Senator appointed by the executive of a State to fill a vacancy is entitled to hold his seat until the Senate is satisfied that a successor is elected and has accepted the office: *Provided*, Such election and acceptance take place during the session of the legislature held next after the vacancy occurs, and that such acceptance ought not to be inferred from the mere presentation to the Senate of the credentials of the newly-elected Senator."

[A debate on the question whether the right to a seat under executive appointment expires on the day of the meeting of the legislature or not until an election has taken place is found on pages 460–463.]

Mr. Rhett moved to amend the resolution of the gentleman from Massachusetts by striking out all after the word "resolved" and inserting the following:

"That a Senator holding a seat by appointment of the executive of a State can only fill the same 'until the next meeting of the legislature' thereof, at which time it devolves upon the legislature of the State to fill the vacancy then existing."†

[The debate on the same question is continued on pages 463–465 of the Congressional Globe referred to.]

An amendment having been proposed by Mr. Rhett, on motion by Mr. Hale that the resolution lie on the table, it was determined in the negative—yeas 22, nays 25.

On motion by Mr. Rhett, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Benton, Bradbury, Butler, Chase, Davis of Mississippi, Dickinson, Douglas, Downs, Felch, Gwin, Hale, Hamlin, Hunter, Jones, King, Miller, Pearce, Phelps, Pratt, Sturgeon, Upham, and Wales.

Those who voted in the negative are Messrs. Badger, Baldwin, Bell, Berrien, Borland, Clarke, Davis of Massachusetts, Dodge of Wisconsin, Dodge of Iowa, Foote, Greene, Mangum, Mason, Morton, Norris, Rhett, Rusk, Smith, Soulé, Spruance, Turney, Underwood, Walker, Whitcomb, and Yulee.

[The debate on the same subject is continued on pages 465–467 of the Congressional Globe referred to.]

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* This motion is taken from the Congressional Globe. It does not appear in the Senate Journal.

† This amendment is taken from the Congressional Globe. It does not appear in the Senate Journal.

SATURDAY, *February* 8, 1851.

The Senate resumed the consideration of the resolution submitted yesteday by Mr. Davis, of Massachusetts, in relation to the duration of an appointment made by the executive of a State to fill vacancies in the Senate, and after debate (which is found on pages 477, 478 of the Congressional Globe referred to),

Mr. Baldwin proposed the following resolution as an amendment to the resolution submitted by the Senator from Massachusetts:

"*Resolved*, That a Senator appointed by the executive of a State in consequence of the happening of a vacancy during the recess of the legislature is entitled to hold his seat under the temporary appointment of the executive until such vacancy is filled by the legislature at the next session thereof, and the person appointed to fill the same shall appear and be qualified therefor, pursuant to the requirement of the Constitution."*

[Remarks to the effect that nothing practical was before the Senate, Mr. Winthrop having vacated his seat and Mr. Rantoul not having appeared, are found on page 478 of the Congressional Globe referred to.]

On motion by Mr. Hale,

Ordered, That it lie on the table.

*This resolution is taken from the Congressional Globe. It does not appear in the Senate Journal.

[Thirty-second Congress—Second session.]

ARCHIBALD DIXON,

Senator from Kentucky from December 20, 1852, *till March* 3, 1855.

December 15, 1851, Henry Clay addressed a letter to the general assembly of Kentucky resigning his seat in the Senate, "to take effect on the first Monday of September, 1852." December 30, 1851, Archibald Dixon was elected by the legislature to fill that unexpired term. June 29, 1852, during the recess of the legislature, Henry Clay died. July 6, the governor appointed David Meriwether Senator "until the time the resignation of Henry Clay takes effect." Mr. Meriwether's credentials were presented and he took his seat July 15, and held it until Congress adjourned August 31. December 6, the Senate reassembled, Mr. Meriwether did not appear, and Mr. Dixon appeared and presented his credentials. Objection was made to his taking the oath of office, on the ground that the seat belonged to Mr. Meriwether; that Mr. Meriwether had been appointed to fill a vacancy happening by the death of a Senator, and that he had a right to the seat until the next meeting of the legislature, and that it was not in the power of the governor to limit his term of office to the first Monday in September, 1852. The seat was vacant until December 20, when the Senate by a vote of 27 yeas to 16 nays resolved that Mr. Dixon had been duly elected "to fill the vacancy in the Senate occasioned by the resignation of the Hon. Henry Clay, and was entitled to a seat therein."

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journals, 1st and 2d sess. 32d Cong., 1851-'52 and 1852-'53. There being no report of a committee in the case, an extract from the remarks of Mr. Rusk (page 93 of the Congressional Globe, vol. 26, 2d sess. 32d Cong., December 20, 1852) is given, which states briefly the main points under discussion by the Senate.

Special references to each day's debates on the subject, most of which are found within pages 1-95 of the Congressional Globe above referred to, are inserted below.

[Extract from remarks of Thomas J. Rusk, of Texas, in Senate, December 20, 1852.]

"The following facts make up the case: On the 17th of December, 1851, Henry Clay was a Senator from Kentucky, chosen by the legislature for six years, which would have expired on the 3d of March, 1855. Being so a Senator, he resigned by a communication to the legislature of Kentucky, declaring that it was to take effect on the first Monday in September, 1852. The legislature, then in session, received the resignation, and chose Mr. Dixon to fill the vacancy thus to occur from the first Monday in September, 1852, to the 3d day of March, 1855. The legislature then adjourned. On the 29th day of June, 1852, during the recess of the legislature of Kentucky, Mr. Clay died, and the governor of that State made a 'temporary appointment' of Mr. Meriwether as a Senator from Kentucky, to hold the seat *until the first Monday of September*, 1852. Mr. Meriwether immediately took the vacant seat, and held it until Congress adjourned on the last day of August, 1852. On the 6th of December, 1852, the Senate reassembles, Mr. Meriwether does not appear, and Mr. Dixon appears and presents his credentials, and claims the vacant seat.

"Manifestly, Mr. Dixon is one of *two* Senators 'chosen by the legislature' of Kentucky 'for six years,' and he was chosen to fill a vacancy which has happened in the term of Mr. Clay.

"The whole question turns on the point, how did this vacancy happen? Mr. Clay resigned, fixing the first Monday of September as the day when he should *vacate* his seat, and died, nevertheless, a Senator before that day arrived. Mr. Dixon was appointed by the legislature when in session, before not only the day which Mr. Clay's resignation fixed for his retirement, but also before Mr. Clay's death.

"We who maintain Mr. Dixon's title insist that the vancancy happened by Mr. Clay's resignation. On the contrary, those who deny Mr. Dixon's title insist that the vacancy happened by Mr. Clay's death.

"Four questions arise:

"First. Can a Senator resign?

"Second. Can a Senator resigning *appoint a future day for his retirement from the Senate?*

"Third. Can the proper appointing power receive such a resignation, and prospectively fill the vacancy?

"Fourth. If the legislature so prospectively fill the vacancy, can the appointment be *defeated by the death* of the resigning Senator before the arrival of the day fixed for his retirement from the Senate?

"If a Senator can resign, and can so resign prospectively, and if the legislature can so fill the vacancy prospectively, and if their action cannot be defeated by the death of the resigning Senator, then Mr. Dixon's title is good, valid, and complete.

"The first question is expressly decided by the Constitution, which declares that vacancies may 'happen by resignation.'

"The second question is decided by an unbroken succession of precedents from the

foundation of the Government. Mr. Bledsoe so resigned, fixing a future day; so did Mr. Clay in 1842; so did Mr. Berrien in 1852; and so did Mr. Foote in 1852.

"The third question is answered with equal distinctness by precedents. The legislature of Kentucky prospectively filled the vacancy made by Mr. Clay's resignation in 1842; the governor of Georgia prospectively filled the vacancy of Mr. Berrien in 1852; and the governor or legislature of Mississippi prospectively filled the vacancy of Mr. Foote in 1852.

"The only question remaining is the fourth: Can the death of the resigning Senator after the legislature has prospectively filled the vacancy, and before the day fixed for his retirement, defeat the appointment of his successor already made?"

[Transcript of proceedings from the Journals.]

THURSDAY, *July* 15, 1852.

Mr. Bright presented the credentials of the Hon. David Meriwether, appointed a Senator by the executive of the State of Kentucky until the first Monday in September next, to fill the vacancy occasioned by the death of the Hon. Henry Clay; which were read, and the oath prescribed by law having been administered to Mr. Meriwether, he took his seat in the Senate.

[A debate on the question whether Mr. Meriwether's credentials should be referred to a committee on account of the irregularity they contained of limiting the term of service to the first Monday in September is found on pages 1783, 1784 of the Congressional Globe, vol. 24, part 3, 1st sess. 32d Cong., 1851-'52.]

MONDAY, *December* 6, 1852.

Mr. Jones, of Tennessee, presented the credentials of the Hon. Archibald Dixon, chosen a Senator by the legislature of the Commonwealth of Kentucky, to serve for the unexpired term rendered vacant by the resignation of the Hon. Henry Clay, to take effect from the first Monday of September, 1852, until the end of the term for which said Henry Clay was elected; which were read.

An objection being made by Mr. Gwin to administering the oath prescribed by law to the Hon. Mr. Dixon, a debate ensued, and the following resolution was submitted by Mr. Gwin:

"*Resolved*, That the credentials of Archibald Dixon, esq., be referred to a select committee of five, to consider and report thereon."

And Mr. Mangum having proposed the following amendment: Insert at the end of the resolution, "and that the said Archibald Dixon be now qualified and permitted to take his seat in the Senate, and occupy the same pending the action of the said committee,"

By unanimous consent the proceeding thereon was suspended.

* * * * * * *

The Senate resumed the consideration of the credentials of the Hon. Archibald Dixon, and, after further debate, on motion, and by unanimous consent, the proceeding thereon was suspended for the purpose of receiving a report of a committee.

* * * * * * *

The Senate resumed the consideration of the credentials of the Hon. Archibald Dixon, with the resolution submitted by Mr. Gwin.

[The debates of this day on the subject are found on pages 1-5 of the volume of the Congressional Globe referred to in the head-note. They include a discussion of the *prima facie* right of Mr. Dixon to the seat pending the action of the Senate.]

TUESDAY, *December* 7, 1852.

The Senate resumed the consideration of the credentials, &c.

[The debate is found on pages 12-19 of the Globe.]

WEDNESDAY, *December* 8, 1852.

The Senate resumed the consideration of the credentials of the Hon. Archibald Dixon, with the resolution submitted by Mr. Gwin, and,

On motion by Mr. Badger,

Ordered, That the further consideration thereof be postponed to Monday next.

MONDAY, *December* 13, 1852.

The Senate resumed the consideration of the credentials of the Hon. Archibald Dixon, with the resolution submitted by Mr. Gwin.

On motion by Mr. Hunter, and by unanimous consent,

Ordered, That, until the question thereon be decided, the name of Mr. Meriwether be omitted in any call of the yeas and nays.

Mr. Mangum withdrew the amendment which he offered, and Mr. Jones, of Tennessee, offered the following as an amendment to the proposition of Mr. Gwin, to strike out all after the word "resolved," and insert: "That the Hon. Archibald Dixon was duly elected by the legislature of the State of Kentucky to fill the vacancy in the Senate occasioned by the resignation of the Hon. Henry Clay, and is entitled to a seat therein." *

[The debate is found on pages 43–47 of the Globe.]

WEDNESDAY, *December* 15, 1852.

The Senate resumed the consideration of the credentials, &c.

[The debate is found on pages 58–62 of the Globe.]

THURSDAY, *December* 16, 1852.

The Senate resumed the consideration of the credentials, &c.

[The debate is found on pages 69–76 of the Globe.]

MONDAY, *December* 20, 1852.

The Senate resumed consideration of the credentials of the Hon. Archibald Dixon, with the resolution submitted by Mr. Gwin.

On motion by Mr. Jones, of Tennessee, to amend the resolution by striking out, after the word "resolved," "that the credentials of Archibald Dixon, esq., be referred to the Committee on the Judiciary, who shall consider and report thereon;" and, in lieu thereof, inserting, "that the Hon. Archibald Dixon was duly elected by the legislature of the State of Kentucky to fill the vacancy in the Senate occasioned by the resignation of the Hon. Henry Clay, and is entitled to a seat therein," it was determined in the affirmative—yeas 27, nays 16.

On motion by Mr. Hale, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Adams, Atchison, Badger, Bell, Brooke, Butler, Chase, Clarke, Cooper, Davis, Dawson, Dodge of Iowa, Fish, Geyer, Hale, Jones of Tennessee, Miller, Morton, Pearce, Rusk, Seward, Smith, Spruance, Sumner, Underwood, Upham, and Wade.

Those who voted in the negative are Messrs. Bayard, Borland, Bradbury, Bright, Cass, Cathcart, De Saussure, Dodge of Wisconsin, Douglas, Downs, Felch, Gwin, Mason, Norris, Toucey, and Weller.

So the proposed amendment was agreed to.

On the question to agree to the resolution as amended, it passed in the affirmative; and the oath prescribed by law was administered to Mr. Dixon, and he took his seat in the Senate.

[The debate is found on pages 90–96 of the Globe.]

COMPENSATION OF MR. MERIWETHER.

TUESDAY, *December* 21, 1852.

Mr. Rusk submitted the following resolution; which was read:

"*Resolved*, That the Hon. David Meriwether, late a member of the Senate from the State of Kentucky, be paid his mileage and per diem up to the 20th day of December inclusive."

[Some remarks in favor of the adoption of the resolution are found on page 105 of the Congressional Globe referred to in the head-note.]

WEDNESDAY, *January* 5, 1853.

The resolution submitted by Mr. Rusk the 21st of December last, to pay the Hon. Mr. Meriwether his per diem and mileage, was read the second time, and considered as in Committee of the Whole; and, no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read a third time, by unanimous consent.

Resolved, That it pass.

[Remarks on the adoption of the resolution are found on pages 220–221 of the Congressional Globe referred to in the head-note.]

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* This amendment is taken from the Globe. It does not appear in the Senate Journal.

[Thirty-third Congress—First session.]

SAMUEL S. PHELPS,

Senator from Vermont from March 4, 1839, *to March* 3, 1851, *and from January* 19, 1853, *to March* 17, 1854.

Mr. Phelps was appointed by the governor of Vermont January 17, 1853, during the recess of the legislature, to fill a vacancy in the Senate happening by the death of William Upham. His credentials were presented and he took his seat January 19. The legislature met in October and adjourned in December without electing a Senator to fill the unexpired term. Mr. Phelps had held the seat during the remainder of the second session of the Thirty-second Congress, ending March 3, and during the special session of the Senate March 4 to April 11. December 29 he again attended. January 4, 1854, the Senate resolved that the Committee on the Judiciary inquire whether he was entitled to retain his seat. January 16 the committee reported the resolution, "that the Hon. Samuel S. Phelps is entitled to his seat in the Senate of the United States." It was accompanied by a minority report adverse to the right of Mr. Phelps to a seat. March 16 the resolution reported by the committee was rejected by a vote of 12 yeas to 26 nays, and it was "*Resolved*, That the Hon. Samuel S. Phelps is not entitled to retain his seat in the Senate of the United States."

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 1st sess. 33d Cong., 1853–'54, together with the report of the committee (majority and minority), from Senate Reports, 1st sess. 33d Cong., vol. 1, 1853–'54, Report No. 34.

The debates in the case, which are extended, are found in the Congressional Globe, vol. 28, part 1, 1st sess. 33d Cong., and in the Appendix to the Congressional Globe, vol. 29, 1st sess. 33d Cong.

Special references to the debates of each day are inserted below.

WEDNESDAY, *January* 19, 1853.

Mr. Foot presented the credentials of the Hon. Samuel S. Phelps, appointed a Senator by the governor of the State of Vermont to fill the vacancy occasioned by the death of the Hon. William Upham; which were read.

The oath prescribed by law was administered to Mr. Phelps, and he took his seat in the Senate.

TUESDAY, *January* 3, 1854.

Mr. Seward submitted the following resolution for consideration:

"Whereas the Hon. Samuel S. Phelps was appointed by his excellency the governor of Vermont, in the recess of the legislature of that State, to fill a vacancy in the Senate of the United States which had happened by the death of the Hon. William Upham, a Senator whose term of six years would have continued until the 4th of March, 1855; and

"Whereas it is understood that since that temporary appointment was made the legislature of Vermont has been convened at their annual session and has adjourned without filling such vacancy: Therefore,

"*Resolved*, That the Committee on the Judiciary inquire whether the Hon. Samuel S. Phelps is entitled to retain a seat in the Senate of the United States."

[Mr. Seward accompanied the introduction of the resolution by a statement of the facts in the case, which statement is found on page 103 of the Congressional Globe referred to in the head-note.]

WEDNESDAY, *January* 4, 1854.

The Senate proceeded to consider the resolution submitted by Mr. Seward respecting the right of the Hon. Samuel S. Phelps to a seat in the Senate, and the resolution was agreed to.

[A short debate is found on pages 115–117 of the Globe.]

MONDAY, *January* 16, 1854.

Mr. Pettit, from the Committee on the Judiciary, who were instructed by a resolution of the Senate "to inquire whether the Hon. Samuel S. Phelps is entitled to retain a seat in the Senate of the United States," submitted a report (No. 34), also the views of the minority of the committee, in relation to the subject; which were ordered to be printed.

The Senate proceeded to consider the said report, and,

On motion by Mr. Pettit,

Ordered, That the further consideration thereof be postponed to, and made the order of the day for, Wednesday next.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Butler (chairman), Toucey, Bayard, Geyer, Pettit, and Toombs.]

IN THE SENATE OF THE UNITED STATES.

JANUARY 16, 1854.—Ordered to be printed.

Mr. Pettit made the following report; which was considered, postponed to, and made the special order for the day for, Wednesday next, January 18, 1854:

The Committee on the Judiciary, to whom was referred a resolution of the Senate of the 4th of January, 1854, have had the same under consideration, and have directed me to make the following report:

The following is the resolution referred to the committee, to wit:

"Whereas the Hon. Samuel S. Phelps was appointed by his excellency the governor of Vermont, in the recess of the legislature of that State, to fill a vacancy in the Senate of the United States which had happened by the death of the Hon. William Upham, a Senator, whose term of six years would have continued until the 4th of March, 1855; and

"Whereas it is understood that since that temporary appointment was made the legislature of Vermont has been convened at their regular session, and has adjourned without filling such vacancy: Therefore,

"*Resolved*, That the Committee on the Judiciary inquire whether the Hon. Samuel S. Phelps is entitled to retain a seat in the Senate of the United States."

The clauses of the Constitution which bear upon this question may be found in the third section of the first article of that instrument, and read as follows:

"The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

"Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the legislature of any State the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies."

The committee do not think that the last clause of Article V of the Constitution, which provides "that no State, without its consent, shall be deprived of its equal suffrage in the Senate," has any bearing on this question. If a State refuses to appoint two Senators by some means known to the Constitution, it does consent to be deprived of its equal suffrage in the Senate. And in such case the Senate cannot supply the deficiency by creating a Senator; but it can determine upon the validity of his appointment, whether it comes from the legislature or the executive of the State.

There are two modes by which Senators may be appointed, and whether appointed by the one or the other mode, they possess the same power and exercise the same rights and privileges and receive the same emoluments. These modes may be called *primary* and *contingent*. The first rests with the legislature and the second with the executive of the State, when a vacancy happens in the recess of the legislature.

The committee are of opinion that the framers of the Constitution, in providing these two modes by which Senators may be appointed, had in view the obvious propriety, if not necessity, of having two Senators from each State at all times in commission and ready for public service. The committee do not think that the language above quoted, "the executive thereof may make temporary appointments until the next meeting of the legislature," is very perspicuous, definite, or concise in its phraseology or meaning, but, on the contrary, it is subject to two constructions. By one of these constructions both the power to appoint and the term of office of the appointee would terminate upon the *meeting* of the legislature, and thus leave the State for some days, until the legislature could appoint and the new Senator reach the seat of government, without an "equal suffrage in the Senate," a condition which the committee think it was the intention of the constitutional convention to avoid. "The executive thereof may make temporary appointments until the next meeting of the legislature." What may be done *until* the next meeting of the legislature? May appointments be made until that time? Or may the appointee hold his office until that period and no longer? Or do both determine on the next meeting of the legislature?

The committee think it is a limitation upon the power of the executive to make appointments in the recess of the legislature, and which cannot be exercised after its next meeting; but that the force or effect of such appointment, viz, the commission and office, continue until superseded by the action of the primary appointing power, or the expira-

tion of the Senatorial term. In giving this exposition to this provision of the Constitution, the committee believes it has consulted and gives effect to the spirit of that instrument, and has found the true intention and design of its framers, that the Senate should be composed of two Senators from each State.

On the 6th of June, 1809, the Senate adopted the following resolution:

"*Resolved*, That the Hon. Samuel Smith, a Senator appointed by the executive of Maryland to fill the vacancy which happened in the office of Senator for that State, is entitled to hold his seat in the Senate of the United States during the session of the legislature of Maryland, which, by the proclamation of the governor of said State, was to commence on the 5th day of the present month of June, unless said legislature shall fill such vacancy by the appointment of a Senator, and this Senate be officially informed thereof."

The Senate, in this instance, after able and full debate, has solemnly determined that the office of a Senator appointed by the executive does not end on the next meeting of the legislature, but that it may continue during its session.

The construction that the office does not terminate on the meeting of the legislature has received the uniform approval of the Senate from that time till this; for in all instances (and they are numerous) the Senator appointed by the executive has not only held his office until the next meeting of the legislature, but *until* his successor was appointed and made his appearance here to qualify.

In the late cases of Mr. Winthrop and Mr. Rantoul, of Massachusetts, and of Mr. Meriwether and Mr. Dixon, of Kentucky, many able Senators, to whose opinions great deference is due, expressed their convictions that it was a limitation of time within which the appointment must be made, but that the office continued until superseded by the legislature. If, then, the office does not terminate on the *meeting* of the legislature, when will it terminate? Can *meeting* be construed into end, dissolution, or adjournment? Your committee think not.

With these adjudications of the Senate, and the exposition in debate by able Senators, and in view of the propriety if not the necessity of having a full representation from each State in the Senate before us, and believing the language of the Constitution warrants the interpretation we have given it, your committee have come to the conclusion that the Hon. Samuel S. Phelps is entitled to retain his seat, and offer for adoption the following resolution:

Resolved, That the Hon. Samuel S. Phelps is entitled to retain his seat in the Senate of the United States.

MINORITY REPORT.

The Committee on the Judiciary, to whom was referred the resolution of the Senate of the 4th instant, which reads as follows—

"*Resolved*, That the Committee on the Judiciary inquire whether the Hon. Samuel S. Phelps is entitled to a seat in the Senate of the United States"—

Has reported thereon.

As the undersigned dissent from the conclusions of a majority of their colleagues, they ask leave to submit the following report of the minority. The facts upon which the resolution was founded are as follows:

That the Hon. Samuel S. Phelps was appointed by his excellency the governor of the State of Vermont, in the recess of the legislature of that State, to fill a vacancy in the Senate of the United States which had occurred by the death of the Hon. William Upham, a Senator, whose term of six years would have continued until the 4th March, 1855; and that since the temporary appointment by the governor of said State, the legislature of Vermont has been convened at their annual session, and adjourned without filling the vacancy, as prescribed by the Constitution, which reads as follows:

"And if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies."

The question presented to the committee by the foregoing resolution may be thus stated: What shall be the operation of an appointment of a Senator made by the governor of a State in the recess of its legislature where the legislature has met and failed to fill the vacancy by an election?

The decision of this question depends upon the construction of the above words of the Constitution. If the power to fill the vacancy is devolved *exclusively* upon the legislature at its next meeting, then it would follow that the appointing power of the executive would be exhausted; and the Senator appointed by him could, according to precedent, hold his seat only during the session of the legislature; or, in other words, his commission would expire at the adjournment of the legislature.

The question may be presented in another point of view, which might possibly lead to a different conclusion. If the legislature has merely the potential capacity to fill the vacancy according to its discretion, then a failure to perform this function might leave the executive appointment good to fill a continuing vacancy.

This reduces the question to this proposition, viz: Do the words of the Constitution impose a limitation upon the office or the appointing power?

Before stating the conclusion of the undersigned, it may be proper to cite the precedents which are applicable to the question under consideration.

The first case upon record is as follows: George Read, a Senator from the State of Delaware, resigned his seat upon the 15th day of September, 1793, and during the recess of the legislature of said State. The legislature of the said State met in January, and adjourned in February, 1794. Upon the 19th day of March, and subsequent to the adjournment of the said legislature, Kensey Johns was appointed by the governor of said State to fill the vacancy occasioned by the resignation aforesaid. The Senate decided—

That Kensey Johns was not entitled to a seat in the Senate of the United States, as a session of the legislature of the said State had intervened between the resignation of the said George Read and the appointment of the said Kensey Johns.

Mr. Eaton, from the select committee to whom was referred, on the 5th instant, the motion "that Mr. Lanman be admitted to take the oath required by the Constitution," together with the credentials of Mr. Lanman, submitted the following report:

"That Mr. Lanman's term of service in the Senate expired on the 3d March. On the 4th he presented to the Senate a certificate, regularly and properly authenticated, from Oliver Wolcott, governor of the State of Connecticut, setting forth that the President of the United States had desired the Senate to convene on the 4th day of March, and had caused official notice of that fact to be communicated to him."

The certificate of appointment is dated the 8th of February, 1825, subsequent to the time of the notification to him by the President. The certificate further recites that at the time of its execution the legislature of the State was not in session, and would not be until the month of May. The Senate decided that Mr. Lanman was not entitled to a seat in the Senate of the United States.

In May, 1809, the President of the Senate laid before that body a letter from the Hon. Samuel Smith, of Maryland, stating that, being appointed by the executive of that State a Senator, in conformity with the Constitution, until the next meeting of the legislature, which will take place on the 5th day of June next, he submits to the determination of the Senate the question whether an appointment under the executive of Maryland to represent that State in the Senate of the United States will, or will not, cease on the first day of the meeting of the legislature thereof.

The Senate decided that the Hon. Samuel Smith, a Senator appointed to fill a vacancy, was entitled to hold his seat in the Senate of the United States during the session of the legislature of Maryland, which, by the proclamation of the governor of said State, was to convene on the 5th day of the present month of June, unless said legislature shall fill such vacancy by the appointment of a Senator, and the Senate be officially informed thereof.

The chairman of the Committee on the Judiciary, at the second session of the Thirty-first Congress, to whom was referred the resolution of the Senate directing said committee to inquire and report at what period the term of service of a Senator appointed by the executive of a State, during the recess of the legislature thereof, rightfully expires, submitted the following report:

"The question presented by the resolution turns mainly upon the construction of the clause of Article XVIII, section 2, of the Constitution of the United States, which provides that 'if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall fill such vacancies.'"

Your committee are of the opinion that the sitting member, under executive appointment, has a right to occupy his seat until the vacancy shall be filled by the legislature of the State of which he is a Senator, during the next meeting thereof. To fill such vacancy it is not only necessary to make an election, but that the person elected shall accept the appointment. And your committee are further of the opinion that such acceptance should appear by the presentation to the Senate of the credentials of the member-elect, or other official information of the fact, at which time the office of the sitting member terminates. When the member-elect is present and ready to qualify, his express acceptance is at once made known; and when his credentials are presented in his absence his acceptance may be fairly implied.

Perhaps it would have been as well if the strict and literal meaning of the words, "*until* the next meeting of the legislature," had been observed on the first occasion in which their construction was brought in question; that would have had the merit of

certainty, but a certainty that might have been too severe for the true and liberal intendment of the framers of the Constitution. They certainly did mean to say that an executive appointment should terminate when legislative jurisdiction shall commence or be exercised. To give this severe construction to the words quoted would in all cases leave a State unrepresented for a time, that depending on legislative action; rather than lead to that result the Senate, under the precedents quoted, seem to have regarded the "*next meeting of the legislature*" as synonymous with the next session of the legislature, during which time the member under executive appointment might hold his seat, unless it should be filled by an election before the termination of a session; and this was probably in analogy to that provision of the Federal Constitution by which power is vested in the President "to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session."

As there was no reference to a committee, and no reported debate in the case of Mr. Smith, of Maryland, which made the precedent, the essential reasons which governed the judgment of the Senate are not given; the case, however, seems to have been well considered. There are two considerations which seem to have entered into that judgment: First, that the State legislature, after their meeting, should have an *opportunity* of consultation in making a choice of Senator, and the State, during such term of consultation, should not be deprived of a representative in the Senate. The utmost limit contemplated for the exercise of this legislative jurisdiction was the term of the sitting of the legislature. The second consideration was a confident assumption that the office would be filled during such term. The idea that a session would pass over without an election was not in the mind of the Senate. The Senate went very far when it gave an interpretation to the words referred to beyond their literal meaning, limiting the tenure of office of the sitting member to the day of the meeting of the legislature. This met with a decided opposition from a respectable minority, and in subsequent cases distinguished Senators maintained the same view of the Constitution. By the report of the committee we are required to recognize as authority and to enlarge this liberality of construction—to say that the words "until the next meeting of the legislature" may be construed to mean not only until and during the session of the next legislature, but beyond the next meeting of the legislature; in other terms, that until the next meeting, &c., may operate under the authority of precedent to give the sitting member a right to hold his seat *beyond* the meeting of the legislature. We cannot agree that by the authority of any precedent these words "until and beyond" shall have such a meaning as will control the import of the Constitution, both in its spirit and letter.

The Senate of the United States is composed of organized constituencies, the State legislatures; to them belong the power primarily of electing their Senators, when they are in session, at the happening of the vacancy, and at their first meeting when it happens in their recess, and on them devolves the exclusive jurisdiction of filling such vacancies. Their right and authority to fill or supply vacancies which have been temporarily filled by executive appointment are as absolute and exclusive as was their power in an original election. When their power is brought into existence it must supersede all others, with this qualification, and that according to precedent, that they have a session to make the choice. In our view it does not depend on the actual exertion of the power to elect, but on its existence. A Senator, under an executive appointment, may or may not represent the political views of his State; he may be the mere personal favorite of the governor. The Senate, as far as practicable, should be made to represent its constitutional constituency, and in this respect should preserve the republican feature of our Union.

In nothing that is said here would we have it inferred that we regard the sitting member whose case is before us as one who may not claim his seat on high grounds and respectable authority. The sanction of a majority of the committee, the opinions of eminent jurists out of this body, go far to sustain his claim. But from the views of the undersigned above presented we do not think the Hon. Samuel S. Phelps is entitled to hold his seat in this body.

A. P. BUTLER.
J. A. BAYARD.

WEDNESDAY *January* 18, 1854.

The Senate resumed the consideration of the report of the Committee on the Judiciary on the right of the Hon. S. S. Phelps to a seat in the Senate; and,

On motion of Mr. Pettit,

Ordered, That the further consideration thereof be postponed until Wednesday next.

[Some remarks on the postponement of the resolution on account of sickness of Mr. Phelps are found on pages 196, 197 of the Congressional Globe referred to in the headnote.]

THURSDAY, *January* 26, 1854.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary respecting the right of the Hon. Samuel S. Phelps to a seat in the Senate; and,

After debate,

On motion by Mr. Butler,

Ordered, That it lie on the table.

[The debate on the subject on this day is found on pages 250–252 of the Globe referred to. It includes remarks by Mr. Pettit, stating the position of the committee.]

WEDNESDAY, *February* 1, 1854.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary in relation to the right of the Hon. Samuel S. Phelps to a seat in the Senate; and,

After debate,

On motion by Mr. Butler, the Senate adjourned.

[The debate is found on pages 303, 304 of the Globe referred to. Mr. Bayard's speech on this day against the resolution reported by the majority of the committee is reported in the Appendix to the Congressional Globe referred to in the head-note.]

THURSDAY, *February* 2, 1854.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary in relation to the right of the Hon. Samuel S. Phelps to a seat in the Senate; and,

After debate,

On motion by Mr. Pratt,

Ordered, That the further consideration thereof be postponed until Thursday next, the 9th instant.

[The debate is found on pages 314–318 of the Congressional Globe referred to. It includes remarks by Mr. Butler, stating the position of the minority of the committee. A speech made by Mr. Phelps on this day in vindication of his title to the seat is found on pages 356–359 of the Appendix to the Congressional Globe referred to.]

WEDNESDAY, *March* 8, 1854.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary on the right of the Hon. Samuel S. Phelps to a seat in the Senate; and,

After debate,

On motion by Mr. Foot,

Ordered, That the further consideration thereof be postponed until to-morrow.

[The debate, consisting largely of remarks by Mr. Phelps, is found on pages 359–365 of the Appendix to the Congressional Globe referred to.]

MONDAY, *March* 13, 1854.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary on the right of the Hon. Samuel S. Phelps to a seat in the Senate; and,

After debate,

On motion,

Ordered, That the further consideration thereof be postponed until to-morrow.

[The debate is found on page 610 of the Congressional Globe. Mr. Phelps's remarks are on pages 365–369 of the Appendix, and Mr. Badger's reply to a portion of Mr. Phelps's argument is on pages 369–371 of the Appendix.]

WEDNESDAY, *March* 15, 1854.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary on the right of the Hon. Samuel S. Phelps to a seat in the Senate; and,

After debate,

On motion by Mr. Mason,

Ordered, That the further consideration thereof be postponed until to-morrow.

[A speech by Mr. Foot, in vindication of the right of his colleague to the seat, which was the only speech made on the subject this day, is found on pages 630–632 of the Congressional Globe.]

THURSDAY, *March* 16, 1854.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary on the right of the Hon. Samuel S. Phelps to a seat in the Senate; and,

After debate, on the question of agreeing thereto, it was determined in the negative—yeas 12, nays 26.

On motion by Mr. Foot, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Clayton, Dodge of Iowa, Everett, Fessenden, Foot, Geyer, Morton, Norris, Sebastian, Wade, Walker, and Williams.

Those who voted in the negative are Messrs. Adams, Allen, Atchison, Badger, Bayard, Brodhead, Brown, Butler, Clay, Dodge of Wisconsin, Douglas, Evans, Fish, Fitzpatrick, Hamlin, Hunter, Mason, Pearce, Pratt, Rusk, Seward, Shields, Slidell, Stuart, Sumner, and Toucey.

So the resolution was not agreed to; and it was

Resolved, That the Hon. Samuel S. Phelps is not entitled to retain his seat in the Senate of the United States.

COMPENSATION OF MR. PHELPS.

Mr. Badger submitted the following resolution; which was read the first and second times, by unanimous consent, and considered as in Committee of the Whole:

"*Resolved*, That there be paid out of the contingent fund of the Senate, to the Hon. Samuel S. Phelps, a sum equal to the amount of mileage and per diem compensation of a Senator from the day of his attendance at the present session to this day, inclusive."

And no amendment being made, it was reported to the Senate.

The resolution was read the third time by unanimous consent.

Resolved, That it pass.

[The debate is found on pages 639–646 of the Congressional Globe.]

FRIDAY, *March* 17, 1854.

On motion by Mr. Foot, the vote on passing the resolution, submitted yesterday by Mr. Badger, to pay to the Hon. Samuel S. Phelps his mileage and per diem, was reconsidered.

The Senate resumed the consideration of the said resolution; and, having been amended on the motion of Mr. Foot, it was agreed to, as follows:

"*Resolved*, That there be paid to the Hon. Samuel S. Phelps the amount of mileage and per diem compensation of a Senator from the day of his attendance at the present session to this day, inclusive."

[Brief remarks are found on page 676 of the Congressional Globe.]

[Thirty-third Congress—First session.]

JARED W. WILLIAMS,

Senator from New Hampshire from December 12, 1853, *to August* 4, 1854.

Mr. Williams was appointed to fill a vacancy happening by the death of Charles G. Atherton. After his appointment the legislature met and adjourned without electing a Senator to fill the unexpired term. The circumstances of the meeting and adjournment of the legislature were as follows: The constitution of New Hampshire provided that "the senate and house shall assemble every year on the first Wednesday of June, and at such other times as they may judge necessary; and shall dissolve and be dissolved seven days next preceding the said first Wednesday of June." It further provided (article 50, part 2) that "the governor, with advice of council, shall have full power and authority during the sessions of the general court to adjourn or prorogue it to any time the two houses may desire, and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the State should require the same." July 15, 1854, the governor, in a communication to the legislature, said: "Having been informed by a joint committee of both branches of the legislature that you have finished the business before you, and are ready to adjourn, by the authority vested in me, I do hereby adjourn the legislature to the last Wednesday of May next." The Judiciary Committee of the United States Senate reported that this was an adjournment "*sine die*, in the legal import of the term," and that "the right of representation under appointment" had expired. Mr. Williams claimed that even if this were so, he was entitled to his seat, notwithstanding precedents to the contrary; but claimed further that this was an adjournment to a day certain, and not an adjournment *sine die*. The Senate concurred in the report of the committee, and "*Resolved*, That the 'right of representation under appointment' had expired."

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 1st sess. 33d Cong., 1853-'54, together with the report of the committee from Senate Reports, 1st sess. 33d Cong., vol. 2, 1853-'54, No. 385.

The debate in the case, which is brief, is found on pages 2208-2211 of the Congressional Globe, vol. 28, part 3, 1st sess. 33d Cong.

MONDAY, *December* 12, 1853.

Mr. Weller presented the credentials of the Hon. Jared W. Williams, appointed a Senator by the executive of the State of New Hampshire to fill the vacancy occasioned by the death of the Hon. Charles G. Atherton, which were read; and the oath prescribed by law having been administered to Mr. Williams, he took his seat in the Senate.

TUESDAY, *July* 25, 1854.

Mr. Mallory submitted the following resolution; which was considered by unanimous consent, and agreed to:

"Whereas the Hon. Jared W. Williams was appointed by his excellency the governor of New Hampshire, in the recess of the legislature of that State, to fill a vacancy in the Senate of the United States which had happened by the death of the Hon. Charles G. Atherton, a Senator, whose term of service would have continued until the 4th of March, 1859; and

"Whereas it is understood that since that temporary appointment was made the legislature of New Hampshire has been convened at their regular session and has adjourned to the last Wednesday of May next without filling such vacancy, and that said State still claims a right of representation under said appointment, which the appointee is not at liberty to surrender by his act without the action of the Senate: At his request, therefore,

"*Resolved*, That the subject be referred to the Committee on the Judiciary to inquire into the facts connected with it and to make such report as they deem proper to enable the Senate to determine whether the right of representation under said appointment has expired."

WEDNESDAY, *August* 2, 1854.

Mr. Butler, from the Committee on the Judiciary, who were directed by a resolution of the Senate to inquire into and report on the right of the Hon. Jared W. Williams, appointed a Senator by the governor of New Hampshire, to continue to hold his seat under that appointment, submitted a report (No. 385) thereon; which was ordered to be printed.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Butler (chairman), Toucey, Bayard, Geyer, Pettit, and Toombs.]

IN THE SENATE OF THE UNITED STATES.

AUGUST 2, 1854.—Ordered to be printed.

Mr. Butler made the following report:

The Committee on the Judiciary, to whom was referred the following preamble and resolution of the Senate, have had the same under consideration, and report:

"*Whereas the Hon. Jared W. Williams* was appointed by his excellency the governor

of New Hampshire, in the recess of the legislature of that State, to fill a vacancy in the Senate of the United States which had happened by the death of the Hon. Charles G. Atherton, a Senator, whose term of service would have continued till the 4th of March, 1859; and

"Whereas it is understood that since that temporary appointment was made the legislature of New Hampshire has been convened at their regular session, and has adjourned to the last Wednesday of May next, without filling such vacancy, and that said State still claims a right of representation under said appointment, which the appointee is not at liberty to surrender by his act without the action of the Senate: At his request, therefore,

"*Resolved*, That the subject be referred to the Committee on the Judiciary, to inquire into the facts connected with it, and to make such report as they deem proper to enable the Senate to determine whether the right of representation under said appointment has expired."

Under this resolution the committee are required to inquire into the facts connected with the case, and to make such report as they deem proper, to enable the Senate to determine whether the right of representation under said appointment had expired.

As the question to be determined must depend in a great measure on the proceedings of the legislature and constitution of New Hampshire, the committee submit the following as a part of their report, having a bearing on the case:

COMMUNICATION FROM THE GOVERNOR TO THE LEGISLATURE.

To the senate and house of representatives:

I have signed all the bills and resolutions which you have passed the present session and presented for my approval (except the bills and resolutions which I have returned to the house of representatives with my objection thereto), and having been informed by a joint committee of both branches of the legislature that you have finished the business before you and are ready to adjourn, by the authority vested in me I do hereby adjourn the legislature to the last Wednesday of May next.

N. B. BAKER.

COUNCIL CHAMBER, *July* 15, 1854.

"The senate and house shall assemble every year on the first Wednesday of June, and at such other times as they may judge necessary; and shall dissolve and be dissolved seven days next preceding the said first Wednesday of June, and shall be styled the general court of New Hampshire."—*Constitution of New Hampshire*, page 23.

From the language of the governor's communication to the legislature it seems to have been his judgment that the session had closed; and from the language of the constitution it would appear that it will have terminated on the day mentioned, as by another provision of the constitution the governor on the same day is required to dissolve the legislature. In this view of the subject in *proprio vigore*, the legislature had no power of assembling from the time of its adjournment, as announced by the governor, until the last Wednesday of May next, when its existence terminated.

There was a power in the governor, should the general welfare require it, to call the legislature together as an existing body. But when so called together what would have been the character of such a meeting? Would it not have been a distinct session, carrying with its acts and doings all the incidents of a *separate* session? Such would seem to be a fair inference. This being conceded, then it would follow that the late legislature did adjourn *sine die* in the legal import of the term. If this is a legitimate conclusion this case cannot in any particular be distinguished from that decided by the Senate in the case of the Hon. Samuel S. Phelps, a Senator from Vermont, and the committee refer to that case as the authority for their conclusion in the case under consideration.

In response to the resolution the committee are of opinion that "the right of representation under the appointment" has expired.

THURSDAY, *August* 3, 1854.

The Senate proceeded to consider the report of the Committee on the Judiciary on the right of the Hon. Jared W. Williams, appointed a Senator by the governor of the State of New Hampshire, to continue to hold his seat in the Senate under that appointment; and,

After debate, in concurrence therewith,

Resolved, That "the right of representation under appointment" had expired.

[No debate of any importance is recorded in the Congressional Globe.]

FRIDAY, *August* 4, 1854.

On motion by Mr. Dodge, of Iowa, to reconsider the vote agreeing to the report of the Committee on the Judiciary on the right of the Hon. Jared W. Williams to hold his seat in the Senate, under his present appointment, as a Senator from New Hampshire, it was determined in the affirmative—yeas 19, nays 16.

On motion by Mr. Dodge, of Iowa, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Atchison, Bayard, Bell, Brodhead, Butler, Chase, Dawson, Dodge of Wisconsin, Dodge of Iowa, Douglas, Evans, Fitzpatrick, Houston, Johnson, Jones of Iowa, Mallory, Mason, Norris, and Weller.

Those who voted in the negative are Messrs. Allen, Benjamin, Bright, Cooper, Fish, Gillette, Hunter, James, Jones of Tennessee, Pratt, Rockwell, Seward, Stuart, Thompson of Kentucky, Toombs, and Wade.

So the Senate proceeded to consider the said report.

On motion by Mr. Cass that the further consideration of the report be postponed until the first Monday in December next, it was determined in the negative—yeas 11, nays 37.

On motion by Mr. Atchison, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Atchison, Dodge of Wisconsin, Dodge of Iowa, Douglas, Houston, Johnson, Jones of Iowa, Mallory, Pettit, Sebastian, and Toombs.

Those who voted in the negative are Messrs. Allen, Bayard, Benjamin, Bright, Brodhead, Brown, Butler, Cass, Chase, Clay, Cooper, Dawson, Evans, Fessenden, Fish, Foot, Geyer, Gillette, Hunter, James, Jones of Tennessee, Mason, Morton, Pearce, Pratt, Rockwell, Rusk, Seward, Slidell, Stuart, Sumner, Thompson of Kentucky, Thomson of New Jersey, Toucey, Wade, Walker, and Weller.

After debate, in concurrence with the report, it was

Resolved, That "the right of representation under the appointment" had expired.

[It appears from the debate referred to in the head-note that the vote was reconsidered in order to allow Mr. Williams, who had been absent when the subject was first considered, to address the Senate.]

[Forty-sixth Congress—First session.]

CHARLES H. BELL,

Senator from New Hampshire from April 10, 1879, *till June* 20, 1879.

March 18, 1879, the credentials of Mr. Bell, appointed by the governor to fill a vacancy happening during the recess of the legislature, by the expiration of the term of Bainbridge Wadleigh, March 3, were presented. March 19, the credentials were referred to the Committee on Privileges and Elections. April 2, 1879, the committee reported that by reason of a change in the State constitution in 1878, two legislatures were chosen in that year, one, under the old constitution, in March, whose term of office began in June, 1878, and would terminate in May, 1879, and the other, under the new constitution, chosen in November to serve for two years, whose term would begin in June, 1879; that in the Forty-fifth Congress this committee had reported to the Senate that the last-named legislature was the one entitled to elect under the act of July 25, 1866; that the vacancy arising under these circumstances was not a vacancy "happening by resignation or otherwise during the recess of the legislature of any State" (Article I, section 3, of the Constitution); that until the year 1817 persons appointed to fill vacancies arising from the expiration of terms of service had been admitted to seats; but that in 1825, in the Lanman case (see page 5), "it was held, and, in the opinion of this committee, correctly, that the Constitution conferred upon the legislature, and upon it alone, the power to appoint a Senator for the beginning of a new term"; that this decision had been regarded by the Senate as final; that the case of Mr. Sevier (see page 7), in which it was claimed that the Senate had departed from the rule in Lanman's case, was in all material points different from the one under consideration, in that "the time when Mr. Sevier was to go out of office under his election was decided by lot." The committee recommended the adoption of a resolution that Mr. Bell was not entitled to the seat. A minority report held that there was no historical evidence to show whether the Lanman case decided that a governor could not fill a vacancy happening at the beginning of a term, or only that a governor could not lawfully make an appointment in anticipation before the vacancy had occurred; that the report in the Sevier case stated that the Lanman case proceeded upon the former ground; but that, with the exception of that statement, there is no indication that the Senate ever doubted the correctness of the construction of the Constitution that in a case where a Senator has been appointed by the executive after the happening of a vacancy by the expiration of the term without an election of a successor by the legislature, the person so appointed is entitled to the seat. April 10, the resolution reported by the committee was amended by striking out the word "not," and the Senate resolved that Mr. Bell was entitled to the seat.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 46th Cong., 1st sess., and the report of the committee from Senate Reports, 46th Cong., 1st sess., No. 1.

Special references to the debates of each day, which are found in the Congressional Record, vol. ix, part 1, are inserted below.

TUESDAY, *March* 18, 1879.

The Vice-President laid before the Senate the credentials of Charles H. Bell, appointed a Senator by the governor of the State of New Hampshire to fill the vacancy happening in the Senate of the United States by the expiration of the term of Bainbridge Wadleigh on March 3, 1879, during the recess of the legislature of said State; which were read.

On motion by Mr. Wallace,

Ordered, That the credentials lie on the table.

[The debate is found on pages 2, 3 of the Congressional Record referred to in the head-note. In the remarks of Mr. Bell will be found a list of precedents.]

WEDNESDAY, *March* 19, 1879.

On motion by Mr. Wallace,

Ordered, That the credentials of Charles H. Bell be referred to the Committee on Privileges and Elections with instructions to report at as early a day as practicable.

WEDNESDAY, *April* 2, 1879.

Mr. Saulsbury, from the Committee on Privileges and Elections, to whom were referred the credentials of Charles H. Bell, appointed a Senator by the governor of the State of New Hampshire, submitted a report (No. 1) thereon accompanied by the following resolution:

"*Resolved*, That Hon. Charles H. Bell is not entitled to a seat as a Senator by virtue of the appointment by the executive of New Hampshire."

Mr. Hoar obtained leave to submit the views of a minority of the Committee on Privileges and Elections upon the credentials of Charles H. Bell; which were ordered to be printed to accompany the foregoing report.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Saulsbury (chairman), Hill of Georgia, Kernan, Bailey, Houston, Vance, Cameron of Wisconsin, Hoar, and Ingalls.]

IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1879.—Ordered to lie on the table and be printed.

Mr. Saulsbury, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom were referred the credentials of the Hon. Charles H. Bell, claiming a seat in the Senate as a Senator from the State of New Hampshire, have had the same under consideration, and ask leave to make the following report:

The term of Bainbridge Wadleigh, a Senator from the State of New Hampshire, expired by constitutional limitation on the 3d day of March, 1879, in a recess of the legislature, and on the 13th day of March, 1879, Mr. Bell was appointed in his place by the executive.

By reason of a change in the constitution of that State, which took effect in October, 1878, two legislatures were chosen in that year, one, under the old constitution, in March, whose term of office commenced in June, 1878, and will terminate in May, 1879; the other, under the new constitution, was chosen in November to serve for two years, the term commencing in June, 1879.

The Committee on Privileges and Elections of the Senate in the Forty-fifth Congress, to whom was referred the question which of these two bodies had the right to choose a successor to Mr. Wadleigh, was of opinion, and so reported to the Senate, that under the act of 1866 (Revised Statues, section 14) the last-named legislature was entitled to elect, because it was the legislature chosen next preceding the expiration of Mr. Wadleigh's term of service. In the opinion of the committee this report, and the action of the Senate in adopting it, are not important in the settlement of the question now presented.

The Constitution of the United States, Article I, section 3, provides as follows:

"The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years, and each Senator shall have one vote.

"Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies."

It has been noticed that this claimant bases his right to a seat in the Senate, not upon the fact that a term filled by the legislature of New Hampshire had become vacant during a recess of the legislature, but upon the fact that the executive claims the right to make a temporary appointment at the beginning of a term which the legislature has not undertaken to fill.

The committee cannot find in the Constitution any sufficient warrant for this claim. If we look at the provision authorizing the governor to make temporary appointments independently of its connection with the rest of the section, we think it is manifest that the authority is limited to filling vacancies which happen in a term which had been previously filled by the legislature. If it was intended to vest in the executive the power to make temporary appointments to terms for which no person had been chosen by the legislature, why should the words "happen by resignation or otherwise" have been added to the word "vacancies"? They certainly did not render it more comprehensive, and must have been designed to limit and restrict its meaning to vacancies occurring from accident or some unforeseen event. If any doubt, however, existed as to the meaning of the language referred to, when considered unconnected with the rest of the section, such doubts would be removed by construing the provisions of the section together. Applying to them the rules recognized for the construction of statutes and constitutional provisions, the committee are forced to the conclusion that the legislature alone is empowered to choose a Senator upon the expiration of a Senatorial term, and that the executive can only make temporary appointments to fill vacancies occurring in a term which has been previously filled. It is well known that in the convention which framed the Constitution this subject received careful consideration. After it had been determined that the States should have equal representation in the Senate, the manner of choosing Senators was considered; various propositions were submitted, and, among others, appointments by the executives of the States. Finally it was determined to vest in the

legislature the power of choosing Senators, and in the executive the power to make temporary appointments, if vacancies should happen in the office after it had been filled, until such time as the legislature could again act. This, it seems to the committee, was the obvious intent of the Constitution, gathered not only from the language of the entire section under consideration, but also from the debates in the convention in reference to its provisions.

Nothing in the history of the Senate for the last fifty years is at variance with the views here presented.

The records of the Senate show that down to the year 1817 a number of appointments were made by State executives of persons to succeed Senators whose terms of service had expired, and that the persons so appointed were admitted to seats in the Senate.

The first case was that of William Cocke, of the State of Tennessee.

This State was admitted into the Union in 1796. In the month of August of that year, William Cocke and William Blount were chosen Senators in Congress by the legislature. By lot they were assigned to the first and second classes of the three classes directed to be formed by the article of the Constitution above quoted, and Mr. Cocke having drawn the term which expired on the 3d day of March, 1797, during a recess of the legislature, was appointed by the governor to be his own successor on the 22d of April, 1797, and he was admitted to a seat without objection.

The second case was that of Uriah Tracy, a Senator from the State of Connecticut, whose term expired on the 3d of March, 1801. Under an appointment by the governor he was admitted to a seat on the 4th day of March, 1801, after a heated discussion, and by a party vote of 13 to 10.

This precedent was followed on the next day by the admission of Mr. Hindman, of Maryland; by the admission of Mr. Condit, of New Jersey, in 1803; Mr. Anderson, of Tennessee, and Mr. Smith, of Maryland, in 1809; Mr. Cutts, of New Hampshire, in 1813; and Mr. Williams, of Tennessee, in 1817; all executive appointments to fill places made vacant by the expiration of full terms of service during recesses of legislatures, and all were admitted without discussion and without objection.

But in 1825 the term of James Lanman, of Connecticut, expired during a recess of the legislature. In anticipation of the vacancy he had been appointed by the governor as his own successor. His credentials were presented on the 4th day of March, 1825, and after a protracted debate the Senate refused to admit him to a seat. No record of this debate has been preserved, and the committee have not the advantage of the reasoning by which the Senate was guided in its action. Enough, however, remains to show that the Senate decided that a vacancy authorizing an appointment by the executive had not "happened" within the meaning of the Constitution. It was held, and, in the opinion of this committee, correctly, that the Constitution conferred upon the legislature, and upon it alone, the power to appoint a Senator for the beginning of a new term; and it seems to the committee that this decision is clearly in accord with the spirit and meaning of the article of the Constitution already quoted.

This section confers upon the legislature the right, and imposes upon it the duty, of choosing Senators who are to serve for six years.

In every one of the States a legislature must be in session at some time preceding the expiration of a Senatorial term. We know as a fact that at the time of the adoption of the Constitution these sessions were mostly annual, and, as now, those not annual were biennial. After the first assignment of Senators to classes, the term of office was fixed, and, under the Constitution, would expire at a time certain. When, therefore, the first clause of the third section, first article of the Constitution directed that Senators should be chosen by the legislatures, it appears most manifestly to have been the purpose of its framers to give exclusive power to the legislature to make the choice, unless, as provided by the last clause, vacancies should "happen" by resignation, or otherwise, during a recess of the legislature, when the executive should make temporary appointments until the next session of the legislature.

The power to make temporary appointments was conferred upon the executive because the accidents of death, resignation, expulsion, or acceptance of another office could not be foreseen or provided for by the legislature. In the one class of cases the time when a term would expire was fixed by law and was well known. There could be no doubt or uncertainty in regard to it, and in such case a vacancy could occur only by the willful disregard by the State in framing its organic law, or by the legislature, of constitutional obligations. In such case a vacancy could not "happen," or occur by chance, casualty, or other event that could not be guarded against.

The decision in Lanman's case has been for more than fifty years regarded as a correct exposition of the Constitution. During this long lapse of years its authority has not been questioned, and it has guided the action of legislatures and of executives of States.

Many cases have occurred when, under like circumstances, for months, and in some instances for one or two years, and even a longer time, States have been represented upon

the floor of the Senate by a single Senator, and for the reason that the decision in Lanman's case was regarded as final and conclusive of the question. The following are cases of this character:

Cases of unfilled seats or vacancies at beginning of Senatorial terms by reason of non-election.

Maine.—Vacancy from March 4, 1853, till February 23, 1854, when William Pitt Fessenden took the seat under an election.

Connecticut.—Vacancy from March 4, 1851, to May 12, 1852, when Isaac Toucey presented credentials of election by legislature.

Pennsylvania.—Vacancy from March 4, 1855, to January 18, 1856, when William Bigler was seated on an election by the legislature.

Maryland.—Vacancy from March 4, 1843, to January 2, 1844, when James Alfred Pearce, elected by the legislature, took the seat.

North Carolina.—Vacancy from March 4, 1853, to December 6, 1854, when David S. Reid's certificate of election was presented.

Indiana.—Vacancy from March 4, 1855, to February 4, 1857, when Graham N. Fitch was admitted on credentials of legislative election, which was contested, and the contest not decided till late in the spring of 1858.

Missouri.—Vacancy from March 4, 1855, to January 12, 1857, when James S. Green was admitted on a legislative election.

California.—Vacancy from March 4, 1855, to February 15, 1857, when William M. Gwin presented himself under an election by the legislature.

Oregon.—Vacancy from March 3, 1859, until December 5, 1860, when Edward D. Baker took the seat under a legislative election.

It is said, however, that the Senate departed from the rule in Lanman's case in the case of Mr Sevier, appointed as his own successor by the governor of Arkansas in the year 1837.

The report in this case, made by a committee of the Senate, shows that the State of Arkansas was admitted into the Union in the year 1836, and in September of that year elected two Senators, Mr. Sevier and Mr. Fulton. Under the constitutional rule Mr. Fulton was allotted to the second class of Senators and Mr. Sevier to the third, and his term of service expired on the 3d day of March, 1837, during a recess of the legislature.

A committee of the Senate, to whom the credentials of Mr. Sevier were referred, after quoting the decision in Lanman's case, say:

"The decision seems to have been generally acquiesced in, nor is it intended by the committee to call its correctness in question. The principle asserted in that case is that the legislature of a State, by making an election themselves, shall provide for all vacancies that must occur at stated or known periods, and that the expiration of a regular term of service is not such a contingency as is embraced in the second section of the first article of the Constitution."

And the committee concludes by saying:

"The case under consideration is wholly different in principle. The time when Mr. Sevier was to go out of office under his election * * * was decided by lot under the provisions of the Constitution on that subject, * * * and therefore they recommend that Mr. Sevier be admitted."

The case in its facts was identical with that of Mr. Cocke, of Tennessee, settled in 1797, but in all material points differs from the one now under consideration.

The committee, from every view of the case, are forced to the conclusion that the vacancy occasioned by the expiration of the term of Senator Wadleigh cannot be filled by executive appointment, and therefore report the following resolution, and recommend its passage:

Resolved, That the Hon. Charles H. Bell is not entitled to a seat as a Senator by virtue of the appointment by the executive of New Hampshire.

E. SAULSBURY.
BENJ. H. HILL.
J. E. BAILEY.
F. KERNAN.
GEO. S. HOUSTON.
Z. B. VANCE.

VIEWS OF THE MINORITY.

1.

The undersigned members of the Committee on Privileges and Elections, to whom were referred the credentials of Hon. Charles H. Bell, claiming to be admitted as a Sen-

ator from the State of New Hampshire, dissent from the conclusions of a majority of the committee.

The Constitution, Article I, section 3, provides as follows:

1 A.

"The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

"Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the legislature of any State the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies."

The term of office of the Hon. Bainbridge Wadleigh, a Senator from the State of New Hampshire, expired on the 3d day of March, 1879.

By the statute of the United States, approved July 25, 1866, re-enacted Revised Statutes, 814, it is provided:

"The legislature of each State, which is chosen next preceding the expiration of the time for which any Senator was elected to represent such State in Congress, shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress."

Under the new constitution of New Hampshire a legislature was chosen in November, 1878, for a term to begin in June, 1879. That legislature cannot elect a Senator until June, 1879, because by the constitution of the State its legislative powers will not vest until then. Its predecessor could not elect a Senator at its last session, and cannot now, if called together in special session, because it was not the legislature last chosen before the expiration of Mr. Wadleigh's term.

The governor of New Hampshire, on the 13th of March, 1879, made temporary appointment of the Hon. Charles H. Bell until the next meeting of the legislature. Mr. Bell now presents himself to claim the seat. The only question is, has a vacancy happened by "resignation or otherwise," so that the executive was authorized to make this appointment?

We are aided in determining this question by considering the leading purpose of the constitutional provision, the natural meaning of the words, and the uniform construction given to similar language used elsewhere in the Constitution and the previous judgments of the Senate in like cases.

The purpose of the Constitution is to have the Senate always full. This is the interest not merely of the State whose right to elect is in question, but of the whole country, for whom the Senator is to legislate, whose servant he is, and to whom his service is due. To this end the Constitution provides that "the Senate shall be composed of two Senators from each State," and authorizes Congress to make regulations as to the time and manner of electing them. Congress has exercised this authority in the statutes cited, so that no failure of duty of either branch of the legislature may interrupt the State's representation in the Senate. To meet the case of a vacancy happening in the recess of the State legislature the Constitution clothes the executive with the power of temporary appointment. The purpose to keep the representation of the State always full requires the construction which authorizes such appointment when the vacancy happens at the beginning of the term as much as if it happen at any other time. The authority given to the governor is to appoint "until the next meeting of the legislature," which literally construed would require the Senator so appointed to vacate his seat on the day the legislature meet. Yet the Senate, in furtherance of the controlling purpose of the Constitution that the place shall be always full, has uniformly held that the Senator so appointed retains his seat until the legislature choose his successor or adjourn without making a choice.

The authority to appoint is vested in the executive "if a vacancy happen." There is no distinction indicated between vacancies which happen when the term begins and vacancies which happen later. There can be no reason suggested for such a distinction. It is said that the term "vacancy" is not properly applied to offices whose term has expired by limitation at a fixed time but only to terms which have once been filled.

But the Constitution expressly declares "the seats of the Senators shall be vacated at the expiration of the sixth year," &c. Did the Constitution mean to declare that to vacate a seat does not create a vacancy in it?

But it is said a vacancy which occurs at a certain time fixed by law is not a vacancy which "happens"; that the Constitution meant only to vest the appointing power in the

executive in case of the vacancy occurring by reason of events which cannot be certainly foreseen; and this is the strong point of those who differ with us. On the contrary, we affirm that nothing is better settled in the construction of the Constitution and of legislation under it than that the words "vacancies happening" include the case of offices which have a fixed term which has expired, and which are vacant because no new appointment has been made. Article 2, section 2, of the Constitution, in its provision for the appointment of officers, declares:

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session."

Under this provision the President exercises the undisputed power of filling offices which have a term fixed by law which expires in the recess of Congress. Most important rights of the people and of private citizens depend on the legality of such appointments which the construction contended for by the majority of the committee must overturn. In Revised Statutes, section 1769, "the President is authorized to fill all vacancies which may happen during the recess of the Senate by reason of death, or resignation, or expiration of term of office."

It is not the ending of the term, but the absence from the office of any person authorized to fill it, to which the word "happen," which expresses contingency, is applied. It is certain that the term will end. It is still uncertain whether the office will be vacant, because that depends on the contingent event of the legislature's having filled it. It is in accordance with the custom of our language to apply the word "happen" to the simultaneous occurrence of two events, both of which are certain to take place. "If the fourth of July happen on Sunday, the next day shall be a legal holiday." "If the last day of grace happen to be a holiday, the note shall be payable on the day preceding." *A fortiori* the word may be appropriately used to express the occurrence at the same time of two events, one of which is contingent. If there happen to be no Senator in the office, the authority of the executive exists.

The question has frequently arisen for judgment in the Senate. By a line of decisions unbroken, with one possible exception, it has been held that the governor of a State is authorized to fill a vacancy existing at the beginning of a Senatorial term.

April 27, 1797, William Cocke was appointed a Senator from the State of Tennessee by the governor, his term having expired on the third of the preceding month. On the 15th of May, 1797, he presented his credentials, and was admitted to take the oath of office without objection or debate.

March 3, 1801, the seat of Uriah Tracy, of Connecticut, became vacant by the expiration of his term of office. On the 20th of February, 1801, the governor of Connecticut reappointed him a Senator. Objection being raised to his credentials, he was admitted to the oath by a vote of yeas 13, nays 10.

William Hindman, of Maryland, was afterward, on the next day, admitted to the oath on like credentials, without objection.

John Condit, of New Jersey, November 14, 1803, appointed a Senator from New Jersey to fill the vacancy at the beginning of the term, was admitted to take the oath. Mr. Condit's credentials had been presented October 17, previous.

March 4, 1809, Samuel Smith, of Maryland, appointed on that day by the governor of his State to fill the vacancy caused by the expiration of his own term, was admitted to his seat and sworn.

March 4, 1809, Joseph Anderson, of Tennessee, took his seat by virtue of an appointment from the governor of that State.

May 24, 1813, Charles Cutts, of New Hampshire, appointed by the executive to fill the vacancy during the recess of the legislature, was, without question, admitted to take the oath. This vacancy was at the beginning of the term.

March 4, 1817, John Williams, of Tennessee, appointed a Senator by the executive of the State, to hold said appointment until the meeting of the next session of the legislature, was admitted. His credentials were filed on the 10th of the preceding February.

March 4, 1825, James Lanman, of Connecticut, presented his credentials of his appointment by the governor of that State, "to take effect immediately after the 3d of March, 1825, and to hold the seat until the next meeting of the legislature." Mr. Lanman was refused the seat by a vote of 23 to 13. The case was referred to a select committee, who report the facts, but state neither reason nor conclusion. The committee say they have looked into the journals of the Senate, and that the cases of Cocke, Tracy, Anderson, and Williams are the only analogous cases they could find. There is a brief sketch of the debate in Niles' Register, vol. 28, page 32, but no statement of the reason on which any Senator proceeded. There is no historical evidence from which we can determine whether the Senate rejected Mr. Lanman on the ground that the governor could not fill a vacancy happening at the beginning of the term, or on the ground that the governor could not lawfully make the appointment in anticipation, before the vacancy

occurred, and before he could possibly know whether the legislature might be called together before that time. All the precedents which the committee cite, except that of Mr. Cocke, were cases where the appointment was made not when the vacancy happened in the recess of the legislature, but only when the governor thought it might happen. In the case of Cocke the date of the appointment is not given in the journals, although in fact it was after the vacancy. The committee do not cite the case of Hindman, Smith, or Condit, nor the then recent case of Cutts, in deciding which some Senators then in office took part, where the appointments were made after the vacancy existed. There is, therefore, nothing to show whether the Senate meant to overrule all the precedents, some of which were not brought to its attention, or only so many of them as recognized the right of the executive to appoint when a vacancy had not happened.

Judge Story (Constitution, § 727, note 2) says:

"In the case of Mr. Lanman, a Senator from Connecticut, a question occurred whether the State executive could make an appointment in the recess of the State legislature in anticipation of the expiration of the term of office of an existing Senator. It was decided by the Senate that he could not make such an appointment. The facts were that Mr. Lanman's term of service as Senator expired on the 3d of March, 1825. The President had convoked the Senate to meet on the 4th of March. The governor of Connecticut, in the recess of the legislature (whose session would be in May), on the 9th of the preceding February appointed Mr. Lanman as Senator, to sit in the Senate after the 3d of March. The Senate, by a vote of 23 to 18, decided that the appointment could not be constitutionally made until after the vacancy had actually occurred." (See Gordon's Digest of the Laws of the United States, 1827; appendix, note 1, B.)

In regard to the same case, the National Intelligencer of March 8, 1825, says in an editorial note:

"An important constitutional question was yesterday decided in the Senate by the refusal to admit Mr. Lanman to a seat in the Senate under a commission from the governor granted before the expiration of Mr. Lanman's late term of service. This is the first time the question has been adjudicated under such circumstances as to form a precedent; and we presume it may now be considered as a settled construction of the constitutional provision that a vacancy must have literally 'happened' or come to pass before an appointment can be made to fill it."

The State of Arkansas was admitted to the Union in 1836. In October, 1836, the legislature of that State elected Ambrose H. Sevier and William S. Fulton Senators. On the allotment of the Arkansas Senators to their respective classes, as required by the third section of the first article of the Constitution, Mr. Sevier was placed in the class of Senators whose term of service expired on the 3d of March, 1837. The legislature of Arkansas had no opportunity to fill the vacancy, and were not in session after the result of the allotment was known in that State. January 17, 1837, the governor of Arkansas appointed Mr. Sevier to fill the vacancy which would take place on the 3d of March. When Mr. Sevier's credentials were presented at the winter session, Mr. Webster suggested a doubt of the validity of the appointment, in which Mr. Sevier himself concurred. At the March session the credentials were referred to the Committee on the Judiciary. Mr. Grundy, from that committee, reported in favor of Mr. Sevier's admission, and he was admitted.

Mr. Grundy's report states that it is not intended by the committee to call in question the correctness of the decision in the Lanman case; that that case proceeded on the ground "that the legislature should provide for all vacancies which must occur at stated and known periods, and that the expiration of a regular term of service is not such a contingency as is embraced in the second section of the first article of the Constitution."

The report further says:

"The case now under consideration is wholly different in principle. The time when Mr. Sevier was to go out of office was decided by lot."

From this review of the judgments of the Senate, it appears that in every case in which a Senator has been appointed by the executive after the happening of a vacancy by the expiration of a term without an election of a successor by the legislature, the person so appointed has been admitted to his seat. There is no indication that the Senate ever denied or doubted the correctness of this construction of the Constitution, except the unsupported statement of Mr. Grundy of the ground of a decision made twelve years before—a statement which nothing in the journal of the debates confirms, and which is opposed to the understanding of Judge Story and the contemporaneous article in the Intelligencer.

The second section of the first article of the Constitution provides: "When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies." In 1837, the law of Mississippi fixed the time for the election of Representatives in November. The President having called a special session of Congress to meet in September, the governor of Mississippi, on the 13th of June, issued writs for an election in July for two Representatives to Congress to fill said vacancy, *until superseded* by the members to be elected at the next regular election in November,

At this July election Messrs. Gohlson and Claiborne were elected and claimed the seats. Their claim was referred to a committee, of which Andrew Buchanan was chairman, who reported in favor of their right to seats for the full term. They say in their report:

"The Constitution authorizes the executive power of the States respectively to order the filling of all vacancies which have actually happened, in the mode therein pointed out, no matter how the vacancy may have happened, whether by death, resignation, or expiration of the term of members previous to the election of their successors."

In the debate, John Quincy Adams said he believed, in relation to offices, that every one happens to be vacant which is not full; and that, he believed, was the meaning and sense of the Constitution, whether the vacancy occurred from casualty, the regular course of events, expiration of term, or other cause.

The claimants were admitted to their seats. In November following, Messrs. Prentiss and Wood were elected for the same term. At the next December session, the resolution declaring Gholson and Claiborne elected was rescinded, but a resolution was also adopted, by the casting vote of Speaker James K. Polk, that Prentiss and Wood were not members. So that no inference can properly be drawn from that case; and it is of no value, except so far as weight may be attached to the opinions of John Quincy Adams and James K. Polk, both favoring the construction of the Constitution for which we contend.

Appended to the report in the Mississippi case are opinions of two of the most distinguished Attorneys-General of the United States, Roger B. Taney and William Wirt, in which they discuss the meaning of the phrase "vacancies that may happen during the recess" with reference to the power of the President to fill an office which is vacant in the recess, because the Senate adjourned without acting on a nomination, the original vacancy having happened during the session. Both these eminent jurists agree that the term "happen" is equivalent to "happen to exist," "if it come to pass that there be a vacancy." Mr. Taney says:

"The Constitution was formed for practical purposes, and a construction that defeats the very object of the grant of power cannot be a true one. It was the intention of the Constitution that the offices created by law should always be full."

We submit, therefore, that the natural and ordinary meaning of the language employed, the purpose which the framers of the Constitution meant to accomplish, the unbroken current of decisions in like cases, and the uniform construction given to the same language when used elsewhere in the Constitution and in legislation in like cases, concur in supporting the interpretation which establishes Mr. Bell's claim. The office of Senator is a continuous office. When the Senator is duly elected by the legislature beforehand no vacancy exists within the meaning of the Constitution. His taking the oath of office relates back to the beginning of the term and preserves the continuousness of the succession. He is when on his way to take the oath deemed to be a Senator and privileged from arrest. A vacancy happens, and only happens, when the legislature has failed to make due election, or the person chosen declines the appointment, or when the office once filled is vacated by death, resignation, or otherwise.

But if we adopt the narrowest possible construction imputed by Mr. Grundy in the Sevier report, the decision in the case of Lanman, the doctrine of the Sevier decision itself, is enough for the purpose of this case. If the failure of the Arkansas legislature to be in session after the expiration of Mr. Sevier's term was decided by lot made the vacancy contingent in the narrowest sense of that term, so that the governor could appoint, certainly the fact that there is no legislature in the State able to act constitutes such a contingency. Whether it so happens that the person once chosen is unable to remain in office, or it so happens that the legislature cannot meet and choose, the contingency of a vacancy in the office has occurred. The six months at the end of the term are no more important than six months at its beginning. The Constitution makes equally careful provision for either.

GEO. F. HOAR.
ANGUS CAMERON.
JNO. J. INGALLS.

THURSDAY, *April* 3, 1879.

On motion by Mr. Saulsbury, the Senate proceeded to consider the resolution reported yesterday from the Committee on Privileges and Elections, declaring that Charles H. Bell is not entitled to a seat as a Senator by virtue of the appointment of the governor of New Hampshire.

On motion by Mr. Hoar to amend the resolution by striking out, after the word "is," the word "not,"

Pending debate,

Ordered, That the further consideration of the resolution be postponed to Monday next.

[The debate is found on pages 184-189 of the Congressional Record referred to in the head-note.]

MONDAY, *April* 7, 1879.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar.

[The debate is found on pages 273-286 of the Congressional Record referred to in the head-note.]

TUESDAY, *April* 8, 1879.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar.

[The debate is found on pages 287-298 of the Congressional Record referred to in the head-note.]

WEDNESDAY, *April* 9, 1879.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar.

[The debate is found on pages 312-325 of the Congressional Record referred to in the head-note.]

THURSDAY, *April* 10, 1879.

The Vice-President announced that the morning hour had expired, and called up the unfinished business of the Senate at its adjournment yesterday, viz, the resolution reported from the Committee on Privileges and Elections, April 2, 1879, declaring "that Charles H. Bell is not entitled to a seat as Senator by virtue of the appointment by the executive of New Hampshire"; and

The Senate resumed the consideration of the resolution; and

The question being on the amendment proposed by Mr. Hoar, viz: After the word "is" strike out the word "not,"

After debate, it was determined in the affirmative—yeas 35, nays 28.

On motion by Mr. Saulsbury, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Anthony, Bayard, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chandler, Dawes, Edmunds, Ferry, Gordon, Groome, Hamlin, Hill of Colorado, Ingalls, Jones of Florida, Kellogg, Kirkwood, Logan, McDonald, McMillan, Morrill, Paddock, Platt, Plumb, Randolph, Rollins, Saunders, Teller, Voorhees, Walker, White, and Williams.

Those who voted in the negative are Messrs. Bailey, Call, Carpenter, Cockrell, Coke, Conkling, Davis of Illinois, Eaton, Farley, Garland, Grover, Harris, Hereford, Hill of Georgia, Houston, Johnston, Jonas, Kernan, Lamar, Maxey, Morgan, Pendleton, Ransom, Slater, Vance, Vest, Wallace, and Withers.

So the amendment was agreed to.

On the question to agree to the resolution as amended, as follows:

"*Resolved*, That Hon. Charles H. Bell is entitled to a seat as a Senator by virtue of the appointment by the executive of New Hampshire,"

It was determined in the affirmative—yeas 35, nays 28.

On motion by Mr. Saulsbury, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Anthony, Bayard, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chandler, Dawes, Edmunds, Ferry, Gordon, Groome, Hamlin, Hill of Colorado, Ingalls, Jones of Florida, Kellogg, Kirkwood, Logan, McDonald, McMillan, Morrill, Paddock, Platt, Plumb, Randolph, Rollins, Saulsbury, Saunders, Teller, Voorhees, Walker, Whyte, and Williams.

Those who voted in the negative are Messrs. Bailey, Call, Carpenter, Cockrell, Coke, Conkling, Davis of Illinois, Eaton, Farley, Garland, Grover, Harris, Hereford, Hill of Georgia, Houston, Johnston, Jonas, Kernan, Lamar, Maxey, Morgan, Pendleton, Ransom, Slater, Vance, Vest, Wallace, and Withers.

So the resolution as amended was agreed to.

Mr. Charles H. Bell then appeared, and the oath prescribed by law having been administered to him by the Vice-President, he took his seat in the Senate.

[The debate is found on pages 341-355 of the Congressional Record referred to in the head-note.]

MILEAGE OF MR. BELL.

THURSDAY, *June* 19, 1879.

Mr. Saulsbury, by unanimous consent, submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Secretary of the Senate be, and he hereby is, authorized and

directed to pay Hon. Charles H. Bell mileage at the rate allowed by law for attendance at this session, the same to be paid out of the 'miscellaneous items' of the contingent fund."

FRIDAY, *June* 20, 1879.

Mr. Rollins presented the credentials of Henry W. Blair, elected a Senator by the legislature of New Hampshire for the unexpired portion of the term of six years commencing March 4, 1879; which were read.

Mr. Blair then appeared, and the oath prescribed by law having been administered to him by the President *pro tempore*, he took his seat in the Senate.

[Special session of Senate, March, 1885.]

HENRY W. BLAIR,

Senator from New Hampshire from June 20, 1879. [*December* 1, 1885, *still holding seat.*]

March 9, 1885, the credentials of Mr. Blair, appointed by the governor to fill a vacancy happening during the recess of the legislature by the expiration of his previous term, March 3, were presented. A motion that the credentials be referred to the Committee on Privileges and Elections was determined in the negative. A resolution was then submitted that he be admitted to take the oath of office, which was agreed to March 10. It appears from the debates that the case presented the same questions presented by the case of Charles H. Bell (see page 26); that a legislature was elected in November, 1882, to serve for two years, whose term of office began in June, 1883; that another legislature was elected in November, 1884, to serve for two years, whose term of office would begin in June, 1885; that the legislature elected in 1882, acting in accordance with its interpretation of the act of July 25, 1866, and in accordance with a report of this committee made in the Forty-fifth Congress on the same subject, had not elected a successor to Mr. Blair; that the question was whether a vacancy arising under such circumstances was a vacancy "happening by resignation or otherwise, during the recess of the legislature of any State." (Article I, section 3, of the Constitution.) Extracts from remarks given below will show the grounds upon which different Senators proceeded.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 48th Cong., 2d sess. (special session, March and April, 1885), and extracts from remarks of Senators.

The debates are found in the Senate proceedings* of March 9 and 10, 1885, in the Congressional Record, vol. xvii, part 1.

MONDAY, *March* 9, 1885.

Mr. Pike presented the credentials of Henry W. Blair, appointed a Senator by the governor of New Hampshire to fill the vacancy in the representation from that State happening March 4, 1885, during the recess of the legislature.

The credentials were read; and,

On motion by Mr. Vest that they be referred to the Committee on Privileges and Elections, it was determined in the negative.

Mr. Hoar thereupon submitted the following resolution:

"*Resolved*, That Henry W. Blair, appointed a Senator from the State of New Hampshire, be now admitted to take the oath of office,"

When,

On motion by Mr. Harris, and by unanimous consent,

Ordered, That the consideration of the resolution be postponed to to-morrow.

TUESDAY, *March* 10, 1885.

The Vice-President laid before the Senate the resolution yesterday submitted by Mr. Hoar, that Henry W. Blair be now admitted to take the oath of office as a Senator from the State of New Hampshire; and

On the question to agree to the resolution,

After debate, it was determined in the affirmative—yeas 36, nays 20.

On motion by Mr. Vest, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Aldrich, Allison, Cameron, Chace, Conger, Cullom, Dawes, Edmunds, Evarts, Frye, Hale, Harrison, Hoar, Ingalls, Jones of Florida, Jones of Nevada, McMillan, Mahone, Manderson, Miller of California, Miller of New York, Mitchell, Morrill, Palmer, Pike, Platt, Riddleberger, Sabin, Sawyer, Sewell, Sherman, Spooner, Stanford, Teller, Van Wyck, and Wilson.

Those who voted in the negative are Messrs. Beck, Blackburn, Camden, Cockrell, Coke, Eustis, Gibson, Gorman, Jackson, Jones of Arkansas, Kenna, McPherson, Maxey, Morgan, Payne, Pugh, Ransom, Saulsbury, Vance, and Vest.

So the resolution was agreed to.

Mr. Henry W. Blair then appeared, and the oath prescribed by law having been administered to him by the Vice-President, he took his seat in the Senate.

[Extract from remarks of Mr. Vest, of Missouri, in opposition to the resolution submitted by Mr. Hoar that Mr. Blair be admitted to take the oath of office. Found in the proceedings of March 10, 1885, in the Congressional Record, vol. xvii, part 1.]

"Mr. President, yesterday I asked that the resolution should go over until to-day in order that it might be examined by the new Senators just sworn into this body, and in

* References to the pages of the Congressional Record cannot be given, as the Records for the session are not at this date bound.

order that those of us who were members at the time the Bell case was under discussion and was determined should have an opportunity to refresh our recollection in regard to the points then made and discussed. It is not my purpose to enter into a lengthy résumé of that argument then so exhaustively made. I simply wish to say now that I reaffirm what was my conclusion then as a lawyer in regard to this subject.

"I voted on the Bell case that Mr. Bell was not entitled to a seat in this body; that the governor of a State had no right to fill an entire term by original appointment; that the meaning of the Constitution, which declares 'if vacancies happen by resignation or otherwise, during the recess of the legislature of any State' the executive authority of a State may make a temporary appointment, is that when a vacancy shall occur, not by operation of law, but by some event which applies to the individual asking for the office or applying for admission into this body, by the resignation of a person, by death operating upon him, and that the word 'otherwise' in that connection means by similar casualty—when a vacancy shall happen, when it shall occur, not by operation of statute or of any constitution, but when it occurs by resignation, death, or otherwise.

"The terms of the Constitution as originally made—and I shall be very brief in the discussion of the subject, for I only propose to give my own reasons for casting my vote—the terms of the Constitution are:

"'If vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancy.'

"There are three clauses in the Federal Constitution in which the word 'happen' is used. First, in Article II, section 2, the Constitution says:

"'The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.'

"Article I, section 2, provides:

"'When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.'

"Article I, section 3, which is the clause now under discussion, provides:

"'And if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.'

"In all three of these clauses the word 'happen' is used, but I call the attention of the Senate to the fact that in the first two clauses in regard to vacancies in the House of Representatives and vacancies during a recess of the Senate as to executive officers, the word 'happen' is without limitation, 'where vacancies shall happen,' and there is the termination of the power of the President in regard to executive appointments; but in regard to Senators the Federal Convention put a limitation upon the word 'happen.' They did not stop with declaring where vacancies may happen during a recess of a legislature that then the governor may appoint, but where a vacancy shall happen by resignation or otherwise.

"If the Senators now present are correct who claim the power of a governor to exist to appoint in these cases, we are forced to the conclusion that the words 'by resignation or otherwise' are void and meaningless as used by the framers of the Constitution, or else that the terms are a limitation upon the word 'happen.' They are not found in the other two clauses of the Constitution. What makes this argument more significant and conclusive to my mind is that the original draught of the Constitution, which I have before me, and the debates show that the clause as originally reported to the convention of 1787 was absolute and unlimited, when a vacancy should occur, and Mr. Madison moved to put in these terms of limitation, that where the vacancy should occur by resignation or otherwise, or equivalent terms, then the governor of the State might appoint.

"I know it has been said that contemporaneous construction at the time militates against this view. In the debate which occurred in the Bell case an editorial was read from the National Intelligencer of March 8, 1825, and it was said that this had been adopted by Judge Story and by Mr. Gordon, who was compiling a book in regard to the proceedings of Congress at that time. The most authoritative statement in regard to the meaning of Congress and the debates of Congress at that time is found in Niles's Register, the authority of which I take it will not be questioned on this floor. In Niles's Register I find the following:

"'The following members'—

"Says the Register of March 12, 1825—

"'The following members, also re-elected for six years from this day, took the oath of office, namely: Mr. Lloyd, of Maryland; Mr. Macon, of North Carolina; Mr. Guillard, of South Carolina; Mr. J. S. Johnston, of Louisiana; and Mr. Barton, of Missouri.

"'Some conversation took place on the case of Mr. Lanman, reappointed by the governor in the recess of the legislature, the question being, whether a failure by the legis-

lature to make a choice of a Senator constitutes the contingency in which a governor may appoint a Senator, the language of the Constitution being, "if vacancies happen, by resignation or otherwise," &c.'

"It is said, and conspicuously by the Senator from Massachusetts [Mr. Hoar], that the quotation in the National Intelligencer and in the book by Gordon showed that the Lanman case decided in 1825 did not touch this question, did not determine it, and that the Lanman case, a case from Connecticut, went off on the power of the governor to make an appointment before the vacancy existed. Niles's Register asserts emphatically that the very point now at issue before the Senate was decided in 1825. I know that other cases were decided antecedent to the Lanman case, but they were decided, I affirm, without discussion, without debate.

"In 1825 this precise case was brought before the Senate of the United States, and it was decided then that the governor could not appoint as to a full term. In 1825 for the first time this question was elaborately and exhaustively debated by the ablest lawyers then in the United States, and it was decided that the governor did not have the right to make such an appointment; and I say to-day, as was said in the Bell discussion, that from 1825 to the decision of the Bell case in 1879 not one solitary utterance was ever heard upon this floor or elsewhere which questioned the accuracy of the position I take here now.

"I know it is said that the Sevier case from Arkansas, decided in 1837, antagonizes this view; but the report of Mr. Felix Grundy on the Sevier case asserted that that decision was not in antagonism to the Lanman decision, but that it was made upon the express ground that Sevier had drawn his seat by lot, and that therefore the term "happen" applied to that case; but Mr. Grundy expressly says, and I have his report before me as chairman of the Judiciary Committee, that the Lanman case was the precedent; that it decided the correct doctrine, and it was held so invariably until the decision of the Senate in 1879.

"Mr. Wadleigh, from New Hampshire, in discussing this very question admitted that the Lanman case was decisive of the whole matter. Says Mr. Wadleigh:

"'The Senator from Ohio'—

"Referring to Mr. Thurman—

"'The Senator from Ohio would have us believe that there is some doubt as to whether this legislature or the next is entitled to elect. That is a matter which greatly concerns the people of New Hampshire. It is desirable that that question should be settled at once, so that they may not put themselves in a position from which they cannot be extricated without great embarrassment. Accordingly a bill was presented to this body by the Senator from Wisconsin [Mr. Cameron] and referred to the Committee on Privileges and Elections, which reported unanimously that this legislature cannot elect the Senator, that the next legislature must elect. That shows to us clearly that unless this bill passes there must be a vacancy in this Senate from the State of New Hampshire for three months in the next Congress.'

"In other words, that the governor could not fill the vacancy; and there is upon the other side of this Chamber a succession of weighty authority in the same direction. Mr. Thurman asked:

"'Is there any probability of Congress being in session during those three months?

"'Mr. WADLEIGH. I do not know about that.

"'Mr. WHYTE. I ask the Senator from New Hampshire why the governor of New Hampshire cannot appoint for the vacancy until the legislature meets in June?

"'Mr. BLAINE. He cannot do that if the previous term has fully expired.'

"Which is the very case here.

"'Mr. WHYTE. Suppose this legislature has power to elect and does not elect, is not that a vacancy?

"'Mr. BLAINE. Then the power of the governor does not come in.

"'Mr. WHYTE. It does, apparently.

"'Mr. BLAINE. Not at all.

"'Mr. DAWES. Every precedent of the Senate is against that.

"'Mr. BLAINE. The Senator from Maryland is too good a lawyer to make that assertion.

"'Mr. WADLEIGH. Having examined the precedents, I am inclined to think the governor cannot appoint.

"'Mr. BLAINE. Of course the governor cannot appoint. Nothing is better settled than that. The honorable Senator from Ohio [Mr. Thurman] will give his assent to that, if the term has fully expired.'

"Never until the Bell decision by the Senate was any voice ever raised from 1825 to 1879 which gave to the governor of a State the right to fill a full term.

"I remember very well in the Bell discussion when Senator Conkling, of New York, put a question to Senator Hill, of Georgia, in regard to the power of the governor to fill the term. Senator Conkling said: 'If that power exists, the governor, by collusion

with a majority of the legislature, could from time to time put off an election and fill the vacancy out of his own creatures and to suit himself.' Senator Hill replied to him that that was the identical argument which he proposed to make, and that that was the meaning of the constitutional provision, which did not give this power to the executive of a State.

"But if I had any doubt about the meaning of the Lanman decision, I find it in Mr. Benton's Thirty Years' View, and he was the most accurate man who ever wrote in this country in regard to the proceedings of this body or the other. Mr. Benton says:

"'Mr. Lanman has served a regular term as Senator from Connecticut. His term of service expired on the 3d of March of this year, and the general assembly of the State having failed to make an election of Senator in his place, he received a temporary appointment from the governor. On presenting himself to take the oath of office, on the 4th day of March, being the first day of the special Senatorial session convoked by the retiring President (Mr. Monroe) according to usage for the inauguration of his successor, his appointment was objected to as not having been made in a case in which a governor of a State could fill a vacancy by making a temporary appointment. Mr. Tazewell was the principal speaker against the validity of the appointment, arguing against it both on the words of the Constitution and the reason for the provision. The words of the Constitution are: "If vacancies happen (in the Senate) by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments, until the next meeting of the legislature." "Happen" was held by Mr. Tazewell to be the governing word in this provision, and it always implied a contingency, and an unexpected one. It could not apply to a foreseen event, bound to occur at a fixed period. Here the vacancy was foreseen; there was no contingency in it. It was regular and certain. It was the right of the legislature to fill it, and if they failed, no matter from what cause, there was no right in the governor to supply their omission. The Senators voting in favor of the motion were, &c.'

"Showing from the highest authority that in the Lanman case the identical point at issue here to-day was raised and decided and remained an unbroken precedent from 1825 to 1879.

"But, Mr. President, more than that, and I am speaking as rapidly as possible, for this question has been fully exhausted, and I think the decusion in the Bell case will be affirmed here again to-day; and I merely make this statement, as I said before, in order to affirm my own established opinion upon this question and the reasons which I have for it, it has always been held here, it has never been for one instant contradicted, that if the legislature of a State had been in session which could have filled the vacancy, and had the power to fill the vacancy, and refused to do it under the Constitution, then the governor could not possibly have the power to appoint. Now, the legislature of New Hampshire has been in session; the legislature of New Hampshire has had the power to fill this vacancy. The legislature of New Hampshire applied to the supreme court of that State, under the constitution of New Hampshire, to ascertain whether the power existed in the legislative assembly. The supreme court declared to them that the power did exist. They deliberately refused to exercise it; they adjourned; and now it is claimed, in view of these facts, that the chief executive of that State has the right, as I hold, in direct contravention of the terms and spirit of the Constitution, to fill a full term, and that that power exists not *ex vi termini* upon those terms, but according to the meaning of the Constitution itself.

"This is all I desire to say, sir. I shall vote against this gentleman's admission, believing the precedent in the Lanman case to be the correct one; and I shall do so the more cheerfully because I am not ashamed to be found as a lawyer in company with the memory of Carpenter, of Wisconsin, with the opinion of Judge Davis, of Illinois, who voted with me, and with the present Attorney-General of the United States, who made a learned and exhaustive argument upon the same side. I am not ashamed to assert the same opinion in that company and to give feebly the reasons which were then uttered."

[Extracts from remarks of Mr. Hoar, of Massachusetts, in support of the resolution submitted by him that Mr. Blair be admitted to take the oath of office. Found in the proceedings of March 10, 1885, in the Congressional Record, vol. xvii, part 1.]

"Mr. President, I do not think it will be profitable to enter upon the very wide field of discussion which the question involved in this case opens. I think the Senate will prefer to rest its decision to-day upon the authority of one of the most authoritative precedents which have occurred in its history.

"If a legislative body exercising quasi-judicial functions like that which is exercised when the Senate determines the right of a claimant to a seat here can ever be bound by a precedent, the Senate has bound itself by the precedent established in the case of Mr. Bell. It was established on full discussion by great lawyers and great Senators. It was established by a decisive majority, in which the division was totally non-partisan. The great

debaters and lawyers to whom my honorable friend from Missouri alluded who differed with the majority of the Senate on that occasion put forth some of their ablest and best intellectual efforts, rendering it certain that the decision to which the Senate then arrived was a decision moved in view of every reason which could be suggested bearing upon the question.

"The people of the State of New Hampshire have governed themselves and must govern themselves and had a right to govern themselves by the decision which the Senate then made, and nobody can hope that if by a slight majority that decision should be reversed to-day it would stand reversed. Therefore the people of the State of New Hampshire and of all other States where like questions may arise would find themselves in the condition of being compelled to act one way one year and another another, as the changing majority or opinion of the Senate may decide this case and that as it should come up year after year.

"When the question which now arises came up six years ago there were found voting in favor of the right, and of course of the duty and obligation, of the governor of a State to appoint a Senator in a case like this gentlemen on both sides of the Chamber. There was the distinguished gentleman who now sits at the left of my friend from Missouri, the Senator from Indiana [Mr. Voorhees], in that vote, relying, as I have no doubt he did, on the decision of one of the very ablest judges then pronouncing the opinion of the supreme court of his own State on the intepretation of precisely or substantially similar language. There was found Mr. Bayard, the present Secretary of State; Mr. Gordon, of Georgia; Mr. Groome, of Maryland; Mr. Jones, of Florida, now occupying a seat in the Senate; Mr. McDonald, then representing also the State of Indiana; Mr. Randolph, of New Jersey; Mr. Walker, of Arkansas, and Mr. W. Pinkney Whyte, of Maryland, who inherited both the name and blood and largely the capacity of one of the greatest constitutional lawyers who ever occupied a seat in this body.

"Now, I think it is enough to rest this case upon the consideration that if the Senate can adjudge anything it has adjudged this; but perhaps it may not be improper to take a very few minutes, not in a discussion in detail, but in a mere statement of the history of this constitutional question.

"The Constitution of the United States contains this provision, which I submit is the controlling and governing provision, that the several States of the Union shall have an equal and constant power in the Senate of the United States by the representation with which two Senators are clothed. That is what the Constitution means to effect. There is not a full Senate, there is not a State represented and having its equal right and authority in the Senate when any single seat is vacant. To that end the Constitution provides as a mechanism for carrying out and accomplishing the purpose that these seats shall always be full, and that every State in this body shall be the equal of every other State. The provision is that the legislature shall choose their Senators—

"'And if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.'

"This language *verbatim* is repeated in the Constitution in another place, where it is provided that if vacancies happen in any executive office during a recess of the Senate the President shall have the power to make an appointment until the next session. Under that provision time out of mind, originally on the authority of William Wirt and I believe John Marshall, the President of the United States has been held without dispute to have the right to appoint to an office the legal or constitutional term of whose incumbency ends when Congress is not in session.

"Here, therefore, are two sentences in the Constitution, one intended to preserve the continuance of executive power by the discharge of the duties of the subordinate executive officer, and the other intended to preserve the continuance of legislative power by keeping the Senate full, in regard to which the Senator from Missouri is compelled to claim that there is a totally different meaning. If the executive office is vacant, the small, the subordinate, which does not affect the functions of the Government or the equality of the States, or the completeness of one of the two great legislative bodies of the country, it means that if there happen, or if it so be that there is no officer in existence authorized to exercise those functions, then the President may appoint. And yet the Senator claims that the same language means a totally different thing in the case of the Senate.

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"Well, Mr. President, I thank the Senator for his interruption. The Senator concedes that a vacancy has happened, within the constitutional meaning of that term, in the representation of the State of New Hampshire. Now, as I understand, he puts his argument solely on the ground that the words which were intended to mean, in my judgment, if a vacancy shall happen in any possible way, that is by resignation (which is one ordinary way of creating a vacancy) or in any other method whatever, then the

right of the governor to fill the Senatorial office by appointment exists, do not apply to this case. Now, it seems to me, and I submit to the good sense of that Senator himself, that it is utterly incredible, first that the founders of the Constitution should ever have intended to let the Senate be full if the vacancy happened during a term and that it should be vacant until a legislature should meet if a vacancy happened at the beginning of a term. It is utterly incredible that they should have entertained that purpose; but entertaining that purpose, it is still more incredible that any one of the learned lawers and able statesmen who framed the Constitution could have undertaken to effectuate it by such language as he has described. Just think of Mr. Madison desiring to provide that this power of the governor of a State to keep full the representation of his State in the Senate should have a limitation upon it that he should not exercise it at the beginning of a constitutional term, and having in mind the limitation and the restraint that he should have undertaken to express it, and to give legal and constitutional effect to it, by simply adding the words, 'by resignation or otherwise.' He would have said, 'by resignation, and not otherwise,' if he had intended to give constitutional effect to that idea.

"The Constitution using, I repeat, substantially the same language to provide for the two cases if a vacancy shall happen, the Senator is driven to say that 'happen' means one thing in case of the Senatorial office and another thing in the case of the executive office. But conceding that the words have the same meaning, he undertakes to resort to language intended to amplify, to make clear, to make universal in the important case of the Senator the existence of the power, and claims that that is used as a limitation or restriction!

"Mr. President, the framers of the Constitution, and the men who filled these seats from the beginning to the year 1825, beyond any question took the view of the matter which was taken by the Senate in the Bell case; and it is conceded, as the Senator from Missouri himself has conceded, that in ten instances Senators were appointed and took and held their seats in consequence of the exercise of the authority of the executives of their States at the beginning of a constitutional term, when the legislature for any reason had failed to provide by an election. These cases are all cited in the report which was made in the case of Mr. Bell six years ago.

"The first is the case of William Cocke, of the State of Tennessee. The State being admitted into the Union in 1796, Cocke having drawn the term which expired on the 3d of March, 1797, he was appointed by the governor to be his own successor on the 22d of April, 1797. The second case was that of Uriah Tracy, a Senator from the State of Connecticut, whose term expired on the 3d of March, 1801, and under an appointment by the governor made on the 4th of March—precisely the case of Mr. Blair—he claimed his seat and was admitted after a very earnest and heated discussion by a party vote of 13 to 10. This precedent was followed the next day by the admission of Mr. Hindman, of Maryland; by the admission of Mr. Condit, of New Jersey, in 1803; Mr. Anderson, of Tennessee, and Mr. Smith, of Maryland, in 1809; Mr. Cutts, of New Hampshire, in 1813; Mr. Williams, of Tennessee, in 1817; all executive appointments to fill places made vacant by the expiration of full terms of service during recesses of the legislature, and all were admitted without discussion and without objection.

"Then in the year 1825 came the case to which the Senator has referred, of James Lanman. Mr. Lanman was appointed by the governor during the recess of the legislature of the State of Connecticut for the beginning of the full term which was to begin on the following 4th of March. The vacancy had not happened when the governor made the appointment, and by an unbroken series of precedents with but one exception it had been held that the governor had no authority to make the appointment under this constitutional clause in anticipation of a vacancy. In the first place it did not come within the letter of the Constitution; and in the next place not only did it not come within the letter of the Constitution, but it was impossible for the governor to know that the legislature would not assemble and fill the place before the constitutional term began. In one of the early cases the governor had made the appointment in anticipation. I think that was not noticed by the Senate; at least no point was made upon it, and the Senator was admitted without objection; but in no other case had that happened.

"In the Lanman case, therefore, there was a clear, unquestionable objection. The debates are not reported. Who knows what the ground was upon which the majority of the Senate proceeded? The National Intelligencer on the next day in a very clear article stated that the Senate had proceeded on the ground which I have stated, that the governor could not exercise his authority until the vacancy actually occurred. Mr. Gordon, of Pennsylvania, in his Digest of the Laws of the United States, who is referred to by Judge Story as a very able and accurate law writer cotemporary with that decision, and whose book was published a few years after, stated that the case went upon the ground that the governor had no right to appoint until the vacancy actually happened. Judge Story in his work on the Constitution of the United States, on the authority of Mr. Gordon's

Digest, Judge Story being a cotemporary of the Senators who made the decision, sitting here in court at the time it was made, undoubtedly hearing and knowing something personally of so interesting a historic event, says that it was put by the Senate upon the ground that the governor had no right to appoint in anticipation of a vacancy. And the first suggestion, so far as I know—I do not remember the Niles's Register statement which the Senator read—that anybody put the Lanman case upon any other ground than the clear, indisputable ground which I have stated is in Mr. Grundy's report made twelve years after. Mr. Grundy, in distinguishing the Sevier case, undertakes to make his distinction from the Lanman case by saying that the Lanman case went upon the ground that the governor could not appoint when the vacancy happened at the beginning of a term.

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"How weak a proposition—I do not now apply the adjective to my honorable friend's statement, which is a very strong and clear one—but how weak a proposition that is, whoever made it, that a single man should undertake to pronounce the ground upon which forty or fifty Senators proceeded in determining a question of constitutional law, when only one or two of them engaged in the debate. Suppose it to be true that Mr. Tazewell agreed with my honorable friend from Missouri and with the gentleman whose high authority he has cited and so argued, and every other member of the Senate knew perfectly well that whether that was sound or unsound Lanman was not entitled to his seat for the clear and indisputable reason that his appointment had been made by the governor before the vacancy occurred. Does the Senator from Missouri doubt that every one of that majority would have voted against Lanman for the reason that the governor had made the appointment before he had the right to appoint, just as if Mr. Blair had been appointed six months ago by the governor of New Hampshire? That being the case, we are all ageeed that the majority of the Senate would have been constrained to deny the claim of Mr. Lanman. For that reason it seems to me that it is utterly preposterous to say that because one particular Senator made an argument stating another ground also, a majority of the Senate must of course have proceeded on that, and that is a judgment of the Senate of sufficient strength and weight to bear down an uninterrupted series of precedents coming down to the year 1825, and to bear down also the latest and gravest precedent bearing upon the question that happened six years ago.

"Mr. President, this is the general history of this case. It will be found stated at greater length, with all the authorities, all the points as far as I could think of them, in the report made from the Committee on Privileges and Elections by the minority in the Bell case and in the discussion six years ago. If any Senator desires to refresh himself on the question he can look at that report and those debates. But it is, it seems to me, enough, in addition to what I have said, to remark that I cannot conceive it credible that the framers of the Constitution, having for their first and leading object the keeping of the Senate full, the rights of the people and the rights of the States preserved by their full and complete representation, and having given the governor of the State the right to provide for an exigency which would arise at any other period of the term, should have intended to deprive the people of that privilege and the governor of that authority, merely because the vacancy happened at the beginning of the term.

"You have on one side the ten or twelve precedents made by the fathers of the Republic; you have also the decision of the executive department acquiesced in from the foundation of the Government, supported by the authority of John Marshall and William Wirt, in regard to the meaning of precisely similar language in another part of the Constitution; you have the great judgment of the supreme court of Indiana, your own State, Mr. President, made by one of its most accomplished jurists, and you have in addition to that the necessity of preserving the rights of the people of these States; and the one thing opposed is a decision of the Senate, in regard to which no man can know that any single Senator but Mr. Tazewell or possibly Mr. Benton, who wrote about it twenty-five years after, put his decision on this ground, and a decision which the Senate would have been compelled to make on another ground if this ground had never existed; and it is that doubtful, questionable, uncertain precedent upon which the learned Senator and those who think with him rely to bear the weight of this case."

[Remarks of Mr. Pike, of New Hampshire, in support of the resolution submitted by Mr. Hoar that Mr. Blair be admitted to take the oath of office. Found in the proceedings of March 10, 1885, in the Congressional Record, vol. xvii, part 1.]

"Mr. President, inasmuch as some criticism has been made upon the legislature of New Hampshire, and it has been stated by some gentlemen that they had not acted in the choice of a Senator when they should have acted, I desire to say a few words.

"We have a legislature once in two years—a biennial legislature. One was chosen in November, 1882, and another was chosen last November, or November, 1884. Now, the question is, which legislature has the right to elect? After our constitution was changed

that became a mooted question in our State. We had the national law, to which I will ask the attention of Senators while I read:

"'The legislature of each State which is chosen next preceding the expiration of the time for which any Senator was elected to represent such State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress.'

"By this national law of 1866 the legislature chosen next preceding the expiration of the term was the legislature to elect. Our legislature supposed that the legislature chosen last November in Mr. Blair's case was the one next preceding the end of his term, which was to expire on the 4th of March. A large majority of them acted upon that idea. But precisely the same question arose six years ago at the expiration of Mr. Wadleigh's term, and at the time when Mr. Bell was appointed, about whom so much talk has been made.

"That our legislature might put itself in harmony with the National Government, that it might act in obedience to the national law, application was made to the Congress of the United States, and the recent Senator from Wisconsin, Mr. Cameron, introduced a bill by which the national law that I have read might be so modified as to meet the condition of things in our State. The question came up here and was considered by the Committee on Privileges and Elections of this very Senate as to whether the legislature elected in the autumn before the expiration of Mr. Wadleigh's term, or the legislature elected two years before, was the one that should choose the Senator to succeed him; and that bill and that question were considered by the Committee on Privileges and Elections, and Mr. McMillan, a Senator now upon this floor, made the unanimous report of that committee that the legislature elected immediately preceding the expiration of the term, that is, the legislature in Mr. Bell's case, elected the autumn before, and the legislature in the present (Mr. Blair's) case, elected last autumn, was the legislature that had the power, and the only legislature that had the power, to elect.

"That report was submitted to this body, and by a unanimous vote, as the record shows, not a single Senator here dissenting upon adopting the report of that committee, the legislature of New Hampshire elected last autumn was the one and the only one that could elect a Senator for this term. Now, it seems to me that New Hampshire ought not to be very much criticised when she has made this effort to find what the national will was and to find what the will of the Senate was, because she has obeyed it and because she has not disobeyed it; more especially after the question as to whether the governor had the right to fill the vacancy at the end of Mr. Wadleigh's term in 1879 was raised and it was decided that he had the power.

"Mr. President, I hold a seat on this floor. I was elected two years ago last August by the legislature assembling in June, but my term commenced in the March before. Our legislature acted upon the idea that the national law as they understood required, and as the construction given it unanimously by the Senate required, that the legislature to elect, and the only one which could elect, was the one chosen immediately preceding the end of the term.

"In a discussion six years ago in Mr. Bell's case the then Senator from Delaware, Mr. Bayard, so recently here and so distinguished when here, submitted his views to the Senate, and upon the question what legislature has the right to elect in New Hampshire, whether it be the one elected in November preceding the end of the term or the one elected two years and a half before, said:

"'By that law'—

"Having quoted immediately before the national law which I have read—

"'By that law was indicated the legislature and the only legislature which should fill vacancies in the Senate of the United States, whether occurring by expiration of the term or from any other cause.'

"That was the opinion of the distinguished Senator from Delaware then, as it had been the unanimous opinion of the Senate only four years before.

"Allusion has been made to the supreme court of our State. As I said, there has been considerable division of sentiment in our State, although our legislature has been very largely in favor of giving the construction to the national law that its plain terms seem to indicate it ought to have, and which the Senate has given to it, and which the seating of Mr. Bell affirmed. The opinion of the court was asked three years ago. My recent colleague and the gentleman who asks a seat here introduced this question into the Senate by a resolution asking the Senate to reconsider and revise its opinion if it was erroneous. There may be found in the Congressional Record, which I have here, the opinion of the court upon this question which he cited. The opinion of our court was read by him, and, as I said, it is printed in the Record with other opinions. But notwithstanding that, the Senate decided that the national law was too plain to be misunderstood; that it was necessary it should be construed as it had been construed, and refused to render any relief.

"Mr. President, I have but little more to say. I am not only asserting the fact, but I have the conviction in my own mind that the clause in our National Constitution which says that 'when vacancies happen from resignation or otherwise,' instead of being words of limitation, ought to be construed to have a very different meaning. This is the only branch of the Government where States have an equality, where one State has just as much power as another. The framers of the Constitution were so much in earnest that that should be the fact that they prohibited any amendment to the Constitution depriving the States of their equality of suffrage in this body. My idea is that when the framers of the Constitution said 'when a vacancy happens by resignation, or otherwise,' they meant when it happens by resignation, or otherwise, from any cause whatever; that they are words of enlargement and explanation, so that there might not be any doubt upon the question that this body should have equal representation, that there should be equal suffrage on this floor, and that if a vacancy occurred from any cause the executive should have the right to fill it.

"Now where do we stand on this question? The Government decided first by the national law, and the Senate has decided upon the McMillan report and upon the admission of Mr. Bell, that the legislature having the right was the one elected immediately preceding the end of the term. Then they have settled in Mr. Bell's case another question, as to filling the vacancy happening at the end of the term and before the meeting of the legislature, that the governor had the right to appoint, under which appointment Mr. Bell was seated; and that is precisely the question before us to-day."

[Extracts from remarks of Mr. Edmunds, of Vermont, in support of the resolution submitted by Mr. Hoar that Mr. Blair be admitted to take the oath of office. Found in the proceedings of March 10, 1885, in the Congressional Record, vol. xvii, part 1.]

"I wish to say one word, Mr. President, about what is called the act of Congress of 1866. The Constitution provides that Congress may regulate the manner by which and the time at which the legislature of a State shall elect a Senator. That is all the authority which the Constitution of the United States reposes in Congress over that subject. It says in another place, but in the same connection, that the legislature of a State shall ordinarily—I am not now on the question of filling vacancies—elect a Senator for a term of six years. It names nothing but the legislature of a State to do that.

"I was here when the act of 1866 passed, but I had just come into the Senate and I gave it no attention; I probably voted for it if there was a division, it being reported by a committee. But I have been of the opinion ever since I came to examine the subject, and I am of opinion now, as I have stated before, I think, in this body, that the act of Congress, in so far as it undertakes to declare what legislature, whether chosen before or after the expiration of a term, or how long before or how long after, shall elect a Senator, goes beyond its constitutional power. I am also of opinion, and I state it deliberately, and I believe I have stated it before, that when the Congress of the United States undertakes to create a body to elect a Senator which the constitution of the State has not created and which is not its legislature it has gone beyond its power.

"By the constitution, I think, of every State in the Union, certainly every one that I know of, the legislative power is vested in two separate and independent bodies, each one of which acts by itself and for itself, and that is the legislature of the State of which the Constitution of the United States speaks when it says that the legislature shall elect a Senator. Therefore I am of opinion that Congress has no more power to turn the two bodies, the senate and house of representatives of a State, formed under its own constitution as two separate bodies of different numbers and of different constituencies, into one consolidated body voting *per capita*, than it has to declare that a town meeting in the State of Vermont may elect a Senator and call that a legislature, because it is not by the constitution of the State its legislature. But that is apart from this question, and I should not have referred to it only that the act of Congress has been spoken of.

"Now let us come to the question. First, I will begin with the original Constitution, to which my friend from Missouri has made reference, as he supposes supporting his view of the meaning of the words "resignation or otherwise." In the original draught of the Constitution submitted to the convention, as it appears on page 205 of volume 5 of Elliott's Debates, in the Madison Papers, the third section was:

"'On the death, removal, or resignation of any Senator, his place to be filled out of the district from which he came.'

"That was the first draught. The scheme having been entirely changed and abandoned, later on, at page 377, Mr. Rutledge, on the 6th of August, 1787, reported from the committee of detail as follows:

"'ART. V, SEC. 1.—The Senate of the United States shall be chosen by the legislatures of the several States. Each legislature shall choose two members. Vacancies may be supplied by the executive until the next meeting of the legislature. Each member shall have one vote.'

"There, as it stood in that final report in detail, final at that time but changed afterward, you will see that there was no limitation or qualification or restriction except 'vacancies.' They might occur during the sitting of a legislature. Whenever they occurred the executive was to fill those vacancies until the legislature should elect, not until its next meeting even; but in order to keep the representation of the States full, in order to create a national government which should have all its faculties and all its members in place to perform their duties, this draught reported by the committee of detail provided for a universal filling of a vacancy by the executive, and provided for his filling it if a vacancy happened or occurred or existed, whatever it was, even if the legislature were sitting.

"Now we come to the amendment of Mr. Madison. That draught was under consideration on the 9th of August. Article V, section 1, the one I have read, was taken up, and I shall read the whole proceeding in connection, without any observation, so that it will appear just as it stands in these debates:

"'Mr. Wilson objected to vacancies in the Senate being supplied by the executives of the States. It was unnecessary, as the legislatures will meet so frequently. It removes the appointment too far from the people, the executives in most of the States being elected by the legislatures. As he had always thought the appointment of the executive by the legislative department wrong, so it was still more so that the executive should elect into the legislative department.

"'Mr. Randolph thought it necessary, in order to prevent inconvenient chasms in the Senate. In some States the legislatures meet but once a year. As the Senate will have more power and consist of a smaller number than the other house, vacancies there will be of more consequence. The executives might be safely trusted, he thought, with the appointment for so short a time.

"'Mr. ELLSWORTH. It is only said that the executive may supply vacancies. When the legislative meeting happens to be near the power will not be exerted. As there will be but two members from a State, vacancies may be of great moment.

"'Mr. WILLIAMSON. Senators may resign or not accept. This provision is therefore absolutely necessary.

"'On the question of striking out "vacancies shall be supplied by the executives"—

"'Pennsylvania, ay, 1; New Hampshire, Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia, no, 8; Maryland, divided.

"'Mr. Williamson moved to insert, after "vacancies shall be supplied by the executives," the words, "unless other provision shall be made by the legislature" (of the State).

"'Mr. ELLSWORTH. He was willing to trust the legislature, or the executive, of a State, but not to give the former a discretion to refer appointments for the Senate to whom they pleased.

"'On the question on Mr. Williamson's motion, Maryland, North Carolina, South Carolina, Georgia, ay, 4; New Hampshire, Connecticut, Massachusetts, New Jersey, Pennsylvania, Virginia, no, 6.

"'Mr. Madison, in order to prevent doubts whether resignations could be made by Senators, or whether they could refuse to accept, moved to strike out the words after "vacancies" and insert the words "happening by refusals to accept, resignations, or otherwise, may be supplied by the legislature of the State in the representation of which such vacancies shall happen, or by the executive thereof until the next meeting of the legislature."

"'Mr. GOUVERNEUR MORRIS. This is absolutely necessary; otherwise, as members chosen into the Senate are disqualified from being appointed to any office by section 9 of this article, it will be in the power of a legislature, by appointing a man a Senator against his consent, to deprive the United States of his services.

"'The motion of Mr. Madison was agreed to, *nem con.*'

"Thus you will see, Mr. President, that the motive for inserting the words 'resignation or otherwise' (which was afterward trimmed down by leaving out on the report of the committee on style the words 'refusal to accept;' so as to leave it only 'resignation or otherwise') was distinctly stated by Mr. Madison to be, not that you were to classify a kind of vacancies by resignation, but they were put in expressly for the purpose of recognizing the power of a Senator to refuse to hold on to the office to which he had been appointed.

* * * * * * *

"There never was any question in the debates in the constitutional convention but what it was of the highest importance, the very purpose of the Constitution which provided two Senators from each State, that each State should have all the time, whenever this body met, its full representation, not only for the general benefit of all the people, but sometimes, as was then thought, for its own security, for the preservation of its own rights.

"I think, therefore, that this language of Mr. Madison and the action of the conven-

tion clearly show that the argument of my friend from Missouri is a mistaken one in supposing that the introduction of the word 'resignation' was for the purpose of giving a class, one of a kind of events that might happen, on the occasion of which the executive might act and not otherwise; because Mr. Madison states the purpose to be exactly the other thing, by putting in one of the words of that kind and then putting in the word 'otherwise,' to make it clear that a Senator had a right to resign his place, and then, in order to carry on the whole operations of the Government according to the Constitution, providing that the executive, if the legislature were not sitting, should fill it until the legislature met.

"There was nothing otherwise in the whole discussion, I repeat, from beginning to end; and as the draught originally stood it went to the extent, as every Senator will see, of authorizing the executive to fill a vacancy which happened when the legislature itself was sitting until it did fill it; and the only motive stated for the change, which they all agreed to unanimously, was to put in some one word that would affirm and recognize the right of a Senator to resign his place, and then to provide that the State should not go without being represented.

"Now let us come to the Constitution just for a moment, and I shall have done. The legislature shall elect for the term of six years. That is the power given to the legislature.

"'The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years.'

"If you stop there and give it a literal construction, not looking to the purposes of the Constitution—to have a full Senate—there would be no power in any State legislature in this Union to elect if they allowed the time to go by so that when they elected they could not elect under the Constitution for a term of six years. They must elect for a shorter term; they must in New Hampshire; they must in the hundred cases almost which have happened, when the legislature has failed to make provision in advance, so that the election was for six years. Nobody maintains any such proposition, because it defeats the object the Constitution had in view, which was that each State should have two Senators. Now we come to this language about the executive, and see where we are upon the construction of my friend from Missouri:

"'And if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill'—

"What?—

"'such vacancies.'

"The very ones that are named in the preceding line. Therefore, if the authority of an executive is only to fill a vacancy which occurs by resignation or death or expulsion—the only three ways that I can think of, because a refusal to accept does not create a vacancy, it leaves the old vacancy just where it was—if that is the meaning, then the only authority which is left to the legislature is to fill the very vacancy that the governor had a right to fill temporarily, and no other. So if the governor of New Hampshire at this moment has not the power to fill this vacancy, by the very same sign and on the very same words the legislature of New Hampshire when it meets next June cannot fill it even, for the Constitution says in language as plain as words can make it that the vacancy which the legislature is to fill is 'such' vacancy, that is, a vacancy which occurs by resignation or otherwise, that the executive of the State may fill if it happens during the recess of the legislature. We cannot stand on that construction; nobody pretends that we can.

"By what authority of logic or law is it, then, that we hold that the very same words three lines before limit the power of the executive to a particular class of cases, and that the very same words three lines afterward expand the power of the legislature to every kind of vacancy that may exist? 'That won't do,' to use a phrase of a late eminent Senator of this body. We cannot stand on it.

"We hear much of the word 'otherwise.' If Mr. Madison by proposing, or the convention by adopting, the words 'resignation or otherwise' had meant to classify a series of cases like resignation, why would not Mr. Madison, eminent in his knowledge of the English language and clear in its expression, have said 'likewise'? That is the adverb which would suit the class of cases to which my friend from Missouri refers. 'Other things happening in like manner' is the definition of 'likewise,' while 'otherwise' means things happening in any other manner than by resignation. That is the dictionary and the common sense and the universal knowledge of everybody who knows the English language.

"What was the object of the Constitution? It was that the representation of each State should be full, and the Constitution provided two means of keeping it full. First, by the legislature for the full term electing in advance before any vacancy occurred. That would provide for all that. Then both the executive and the legislature, after a

vacancy did happen at a time when the legislature was not in session, could fill it then and there, by providing that instantly the governor in the first instance and the legislature at its next meeting should fill up that vacancy so as to carry out the great objects of the Constitution.

"Wherefore, then, upon any principle of patriotism, or law, or justice, should we endeavor by construction to narrow down the franchise of a State, if I may call it that, and endeavor to find some class of cases where for some period of time a State shall go unrepresented? I am unable to see it; and this report of the debates in the convention shows clearly to my mind, and I think even to that of my friend from Missouri and my friend from Delaware, that the word 'resignation' was not put in with the object that my friends think it was, but for an entirely different object, as was stated by Mr. Madison himself.

"This question was fairly debated when the gentlemen on the other side were in a majority in this Chamber. Without a party division, gentlemen on both sides, voting according to the light they had and not dividing upon party lines, settled this identical question. The Senate in sitting upon such a question sits as judges. The Constitution says so. We are not defining policies; we are not setting up expediencies; we are not carrying on party warfare; we are sitting as the solemn judges sworn to try and determine the election and qualification of a gentleman who presents himself to be a member of this body. We have come to a decision, just as the Supreme Court of the United States sitting two hundred feet from us comes to a decision in a great variety of cases where the judges differ—five one way four another or whatever it may be, a difference of opinion. The decision of the court is announced. What would become of that court if the next time a similar question came up the whole thing was opened again and the contest was gone over repeatedly from year to year and time to time in order to see which should get in the ascendency upon all questions? Nothing would be settled, and the court would be destroyed, and justice, too, for that matter.

"How is it different here? When we have come to a decision, even in a case of doubt, having come to it fairly, not in a time of party heat, or by a party vote, when we, after full deliberation, have come to a decision which carries out confessedly the objects of the Constitution to keep the representation of a State full, should we not stick to it; or are we, every time a similar question comes up about elections, to reverse our decisions, retry them, hold them of no force, and thus keep this body continually in a turmoil over questions of representations in it that come from the States? However doubtful it might have been—it did not seem to me so, to be sure, but however doubtful it might appear to the minds of gentlemen who voted in the minority—it appears to me that, once decided and decided in favor of representation, it would be better to follow that as an established precedent which carries out the objects the Constitution has in view."

A LIST SHOWING ALL THE APPOINTMENTS OF SENATORS BY GOVERNORS OF STATES, FROM THE FIRST TO THE FORTY-NINTH CONGRESS, ARRANGED IN THE ORDER OF TIME THAT THE CREDENTIALS WERE READ IN THE SENATE.

1. John Walker, Virginia.—Appointed March 31, 1790; produced credentials and took seat April 26, 1790; death of William Grayson, and refusal of George Mason to act after election. James Monroe elected November 9, 1790, to fill unexpired term ending March 3, 1791; credentials dated November 10, 1790; produced credentials and took seat December 6, 1790.

2. Kensey Johns, Delaware.—Appointed March 19, 1794; produced credentials March 24, 1794; resignation of George Read; Mr. Johns not admitted. Henry Latimer elected February 7, 1795, to fill unexpired term ending March 3, 1797; produced credentials and took seat February 28, 1795.

3. George Walton, Georgia.—Appointed November 16, 1795; credentials dated November 18, 1795; produced credentials and took seat December 18, 1795; resignation of James Jackson. Josiah Tatnall elected February 20, 1796, to fill unexpired term ending March 3, 1799; credentials dated February 27, 1796; produced credentials and took seat April 12, 1796.

4. William Cocke, Tennessee.—Appointed April 22, 1797; produced credentials and took seat May 15, 1797; expiration of his previous term on March 3, 1797, and non-election of a successor. Under these credentials Mr. Cocke held the seat the first session of the Fifth Congress, May 15 to July 10, 1797. Andrew Jackson elected September 26, 1797, for term ending March 3, 1803; credentials dated October 19, 1797; produced credentials and took seat November 22, 1797.

5. William North, New York.—Appointed May 5, 1798; produced credentials and took seat May 21, 1798; resignation of John Sloss Hobart. James Watson elected August 17, 1798, to fill unexpired term ending March 3, 1803; produced credentials and took seat December 11, 1798.

6. Daniel Smith, Tennessee.—Appointed October 6, 1798; produced credentials and took seat December 3, 1798; resignation of Andrew Jackson. Joseph Anderson elected to fill unexpired term ending March 3, 1803; produced credentials and took seat December 2, 1799.

7. Franklin Davenport, New Jersey.—Appointed December 5, 1798; produced credentials and took seat December 19, 1798; resignation of John Rutherfurd. James Schureman elected to fill unexpired term ending March 3, 1803; credentials dated February 14, 1799; produced credentials and took seat December 3, 1799.

8. Uriah Tracy, Connecticut.—Appointed February 20, 1801; produced credentials and took seat March 4, 1801; vacancy about to result from expiration of his term, March 3, 1801, and non-election of a successor. Under these credentials Mr. Tracy held the seat during the special session of the Senate, March 4 and 5, 1801. In the following May he was elected for term ending March 3, 1807; credentials dated July 8, 1801; produced credentials and took seat December 7, 1801.

9. Samuel White, Delaware.—Appointed February 28, 1801; produced credentials and took seat March 4, 1801; resignation of Henry Latimer. Mr. White elected January 14, 1802, to fill unexpired term ending March 3, 1803; credentials dated January 15, 1802; produced credentials and took seat January 21, 1802.

10. William Hindman, Maryland.—Appointed March 4, 1801; produced credentials and took seat March 5, 1801; expiration of his previous term March 3, 1801, and non-election of a successor. Mr. Hindman held his seat under these credentials March 5, 1801. Robert Wright elected November 19, 1801, for term ending March 3, 1807; produced credentials and took seat December 7, 1801.

11. George Logan, Pennsylvania.—Appointed July 13, 1801; produced credentials and took seat December 7, 1801; resignation of Peter Muhlenberg. Mr. Logan elected to fill unexpired term ending March 3, 1807; credentials dated December 16, 1801; produced credentials and took seat December 21, 1801.

12. John Taylor, Virginia.—Appointed June 4, 1803; produced credentials and took seat October 17, 1803; death of Stephens Thompson Mason. Abraham Venable elected to fill unexpired term ending March 3, 1809; credentials dated December 8, 1803; produced credentials and took seat December 13, 1803.

13. John Condit, New Jersey.—Appointed September 1, 1803; produced credentials and took seat October 17, 1803; expiration of term of Aaron Ogden ending March 3, 1803. Under these credentials Mr. Condit held the seat from October 17 till Novem-

ber 10, 1803. Mr. Condit elected for term ending March 3, 1809; credentials dated November 3, 1803; produced credentials and took seat November 10, 1803.

14. John Armstrong, New York.—Appointed November 10, 1803; produced credentials and took seat December 8, 1803; resignation of De Witt Clinton. John Smith elected February 4, 1804, to fill unexpired term ending March 3, 1807; produced credentials and took seat February 23, 1804.

15. William B. Giles, Virginia.—Appointed August 11, 1804; produced credentials and took seat November 5, 1804; resignation of Abraham B. Venable. Andrew Moore elected December 4, 1804, to fill unexpired term ending March 3, 1809; credentials dated December 5, 1804; produced credentials and took seat December 17, 1804.

16. Andrew Moore, Virginia.—Appointed August 11, 1804; produced credentials and took seat November 6, 1804; resignation of Wilson C. Nicholas. William B. Giles elected to fill unexpired term ending March 3, 1805; credentials dated December 5, 1804; produced credentials and took seat December 17, 1804.

17. George Jones, Georgia.—Appointed August 27, 1807; produced credentials and took seat October 26, 1807; death of Abraham Baldwin. William H. Crawford elected November 7, 1807, to fill unexpired term ending March 3, 1811; credentials dated November 10, 1807; produced credentials and took seat December 9, 1807.

18. Joseph Anderson, Tennessee.—Appointed February 6, 1809; credentials read February 21, 1809; oath administered March 4, 1809; vacancy about to result from expiration of his term March 3, 1809, and non-election of a successor. Under these credentials Mr. Anderson held the seat during the special session of the Senate March 4 to March 7, 1809. Mr. Anderson elected April 11, 1809, for term ending March 3, 1815; credentials dated April 12, 1809; produced credentials and took seat May 22, 1809.

19. Samuel Smith, Maryland.—Appointed March 4, 1809; produced credentials and took seat March 4, 1809; expiration of his term and non-election of a successor. Under these credentials Mr. Smith held the seat during the extra session of the Senate, March 4-7, 1809, and during the first session of the Eleventh Congress, May 22 to June 28, 1809. Mr. Smith elected November 16, 1809, for term ending March 3, 1815; produced credentials and took seat December 4, 1809.

20. John Condit, New Jersey.—Appointed March 21, 1809; produced credentials and took seat May 24, 1809; resignation of Aaron Kitchell. Mr. Condit elected to fill unexpired term ending March 3, 1811; credentials dated November 2, 1809; produced credentials and took seat November 30, 1809.

21. Stanley Griswold, Ohio.—Appointed May 18, 1809; produced credentials and took seat June 2, 1809; resignation of Edward Tiffin. Alexander Campbell elected December 11, 1809, to fill unexpired term ending March 3, 1813; credentials dated December 12, 1809; produced credentials and took seat January 12, 1810.

22. Thomes Posey, Louisiana.—Appointed October 8, 1812; produced credentials and took seat December 7, 1812; resignation of John N. Destréhan. James Brown elected December 1, 1812, to fill unexpired term ending March 3, 1817; produced credentials and took seat February 5, 1813.

23. Charles Cutts, New Hampshire.—Appointed April 2, 1813; produced credentials and took seat May 24, 1813; expiration of his previous term March 3, 1813, and non-election of a successor. Under these credentials Mr. Cutts held the seat from May 24-June 21, 1813. Jeremiah Mason elected for term ending March 3, 1819; credentials dated June 10, 1813; produced credentials and took seat June 21, 1813.

24. William Bellinger Bullock, Georgia.—Appointed April 8, 1813; produced credentials and took seat May 24, 1813; resignation of William H. Crawford. William Wyatt Bibb elected November 6, 1813, to fill unexpired term ending March 3, 1817; credentials dated November 6, 1813; produced credentials and took seat December 6, 1813.

25. Christopher Gore, Massachusetts.—Appointed May 5, 1813; produced credentials and took seat May 28, 1813; resignation of James Lloyd. Mr. Gore elected May 29, 1813, to fill unexpired term ending March 3, 1815; credentials dated May 29, 1813; produced credentials and took seat June 4, 1813.

26. Jesse Wharton, Tennessee.—Appointed March 17, 1814; produced credentials and took seat April 9, 1814; resignation of George W. Campbell. John Williams elected October 4, 1815, to fill unexpired term ending March 3, 1817; credentials dated October 27, 1815; produced credentials and took seat December 4, 1815.

27. George Walker, Kentucky.—Appointed August 30, 1814; produced credentials and took seat October 10, 1814; resignation of George M. Bibb. William T. Barry elected December 16, 1814, to fill unexpired term ending March 3, 1817; credentials dated December 17, 1814; produced credentials and took seat February 2, 1815.

28. Martin D. Hardin, Kentucky.—Appointed November 13, 1816; produced credentials and took seat December 5, 1816; resignation of William T. Barry. Mr. Hardin elected December 5, 1816, to fill unexpired term ending March 3, 1817; credentials dated December 12, 1816; produced credentials and took seat December 24, 1816.

29. John Williams, Tennessee.—Appointed January 20, 1817; credentials read February 10, 1817; took seat March 4, 1817; vacancy about to result from expiration of his

term, March 3, 1817, and non-election of his successor. Under these credentials Mr. Williams held the seat during the special session of the Senate, March 4–6, 1817. Mr. Williams elected October 2, 1817, for term ending March 3, 1823; credentials dated October 4, 1817; produced credentials and took seat December 1, 1817.

30. John Henry Eaton, Tennessee.—Appointed September 5, 1818; produced credentials and took seat November 16, 1818; resignation of George W. Campbell. Mr. Eaton elected October 9, 1819, to fill unexpired term ending March 3, 1821; credentials dated October 11, 1819; produced credentials and took seat December 6, 1819.

31. David Holmes, Mississippi.—Appointed August 30, 1820; produced credentials and took seat November 13, 1820; resignation of Walter Leake. Mr. Holmes held his seat under these credentials the remainder of the term ending March 3, 1821. January 17, 1821, he was elected for the succeeding term.

32. Samuel L. Southard, New Jersey.—Appointed January 26, 1821; produced credentials and took seat February 16, 1821; resignation of James J. Wilson. Under these credentials Mr. Southard held the seat for the remainder of the term ending March 3, 1821. He had been elected for the succeeding term; credentials dated November 15, 1820.

33. Henry W. Edwards, Connecticut.—Appointed October 8, 1823; produced credentials and took seat December 1, 1823; death of Elijah Boardman. Mr. Edwards elected first Wednesday in May, 1824, to fill unexpired term ending March 3, 1827; credentials dated May 31, 1824; produced credentials and took seat December 6, 1824.

34. James Lanman, Connecticut.—Appointed February 8, 1825; credentials read March 4, 1825; vacancy about to result from expiration of his term on March 3, 1825, and non-election of a successor. Mr. Lanman was not admitted on these credentials. Calvin Willey was afterwards elected for term ending March 3, 1831.

35. Powhatan Ellis, Mississippi.—Appointed September 28, 1825; produced credentials and took seat December 12, 1825; resignation of David Holmes. Thomas B. Reed elected January 28, 1826, to fill unexpired term ending March 3, 1827; credentials dated January 30, 1826; produced credentials and took seat March 11, 1826.

36. William Harper, South Carolina.—Appointed March 8, 1826; produced credentials and took seat March 28, 1826; death of John Gaillard. William Smith elected November 29, 1826, to fill unexpired term ending March 3, 1831; credentials dated November 30, 1826; produced credentials and took seat December 7, 1826.

37. Israel Pickens, Alabama.—Appointed February 20, 1826; produced credentials and took seat April 10, 1826; death of Henry Chambers. John McKinley elected to fill unexpired term ending March 3, 1831; credentials dated November 27, 1826; produced credentials and took seat December 21, 1826.

38. Daniel Rodney, Delaware.—Appointed November 8, 1826; produced credentials and took seat December 4, 1826; death of Nicholas Van Dyke. H. M. Ridgely elected January 12, 1827, to fill unexpired term ending March 3, 1829; credentials read January 19, 1827; took seat January 23, 1827.

39. George Poindexter, Mississippi.—Appointed October 15, 1830; produced credentials and took seat December 6, 1830; death of Robert H. Adams. Mr. Poindexter elected November 18, 1830, to fill unexpired term ending March 3, 1835; credentials dated November 25, 1830; produced credentials and took seat December 15, 1830.

40. David J. Baker, Illinois.—Appointed November 12, 1830; produced credentials and took seat December 6, 1830; death of John McLean. John M. Robinson elected to fill unexpired term ending March 3, 1835; credentials dated December 11, 1830; produced credentials and took seat January 4, 1831.

41. Robert Hanna, Indiana.—Appointed August 19, 1831; produced credentials and took seat December 5, 1831; death of James Noble. John Tipton elected December 9, 1831, to fill unexpired term ending March 3, 1833; credentials dated December 10, 1831; produced credentials and took seat January 3, 1832.

42. John Black, Mississippi.—Appointed November 12, 1832; produced credentials and took seat December 12, 1832; to fill seat of Powhatan Ellis, vacated by his acceptance of office of judge of a United States court. Under these credentials Mr. Black held the seat for the remainder of the term ending March 3, 1833. November 22, 1833, he was elected for the succeeding term.

43. Lewis F. Linn, Missouri.—Appointed October 25, 1833; produced credentials and took seat December 16, 1833; death of Alexander Buckner. Mr. Linn elected November 20, 1834, to fill unexpired term ending March 3, 1837; credentials dated November 20, 1834; produced credentials and took seat December 15, 1834.

44. John M. Niles, Connecticut.—Appointed December 14, 1835; produced credentials and took seat December 21, 1835; death of Nathan Smith. Mr. Niles elected to fill unexpired term ending March 3, 1839; credentials dated May 11, 1836; produced credentials and took seat May 16, 1836.

45. Judah Dana, Maine.—Appointed December 7, 1836; produced credentials and took seat December 21, 1836; resignation of Ether Shepley. Ruel Williams elected February

22, 1837, to fill unexpired term ending March 3, 1839; credentials dated February 22, 1837; produced credentials and took seat March 4, 1837.

46. Ambrose H. Sevier, Arkansas.—Appointed January 17, 1837; credentials read February 27, 1837; oath administered March 8, 1837; vacancy about to result from expiration of his term March 4, 1837, and non-election of successor. Under these credentials Mr. Sevier held the seat during the remainder of the special session, March 8–10, 1837, during the first session of the Twenty-fifth Congress, September 4–October 16, and from December 4–13 of the second session. November 7, 1837, he was elected for term ending March 3, 1843.

47. Ephraim H. Foster, Tennessee.—Appointed September 17, 1837; produced credentials and took seat December 3, 1838; resignation of Felix Grundy. Mr. Foster held the seat under these credentials during the remainder of the term ending March 3, 1839. He was elected for the succeeding term but resigned.

48. Thomas H. Williams, Mississippi.—Appointed November 12, 1838; produced credentials and took seat December 13, 1838; resignation of James F. Trotter. Mr. Williams elected January 30, 1839, to fill unexpired term ending March 3, 1839; credentials dated February 1, 1839; produced credentials and took seat February 19, 1839.

49. Alfred O. P. Nicholson, Tennessee.—Appointed December 25, 1840; produced credentials and took seat January 11, 1841; death of Felix Grundy. Ephraim H. Foster elected October 17, 1843, to fill unexpired term ending March 3, 1845; credentials dated November 13, 1843; produced credentials and took seat December 4, 1843.

50. Leonard Wilcox, New Hampshire.—Appointed March 1, 1842; produced credentials and took seat March 7, 1842; resignation of Franklin Pierce. Mr. Wilcox elected to fill unexpired term ending March 3, 1843; credentials dated June 9, 1842; produced credentials and took seat June 13, 1842.

51. Samuel C. Crafts, Vermont.—Appointed April 23, 1842; produced credentials and took seat April 30, 1842; resignation of Samuel Prentiss. Mr. Crafts elected October 26, 1842, to fill unexpired term ending March 3, 1843; credentials dated October 26, 1842; produced credentials and took seat December 7, 1842.

52. William L. Dayton, New Jersey.—Appointed July 2, 1842; produced credentials and took seat July 6, 1842; death of Samuel L. Southard. Mr. Dayton elected October 28, 1842, to fill unexpired term ending March 3, 1845; credentials dated November 8, 1842; produced credentials and took seat December 7, 1842.

53. James Semple, Illinois.—Appointed August 16, 1843; produced credentials and took seat December 4, 1843; death of Samuel McRoberts. Mr. Semple elected December 11, 1844, to fill unexpired term ending March 3, 1847; credentials dated December 19, 1844; produced credentials and took seat January 28, 1845.

54. David R. Atchison, Missouri.—Appointed October 15, 1843; produced credentials and took seat December 4, 1843; death of Lewis F. Linn. Mr. Atchison elected November 20, 1844, to fill unexpired term ending March 3, 1849; produced credentials and took seat December 9, 1844.

55. Dixon H. Lewis, Alabama.—Appointed April 22, 1844; produced credentials and took seat May 7, 1844; resignation of William R. King. Mr. Lewis elected to fill unexpired term ending March 3, 1847; credentials dated December 10, 1844; produced credentials and took seat January 28, 1845.

56. Henry A. Foster, New York.—Appointed November 30, 1844; produced credentials and took seat December 9, 1844; resignation of Silas Wright. John A. Dix elected January 18, 1845, to fill unexpired term ending March 3, 1849; produced credentials and took seat January 27, 1849.

57. Daniel S. Dickinson, New York.—Appointed November 30, 1844; produced credentials and took seat December 9, 1844; resignation of Nathaniel P. Tallmadge. Mr. Dickinson elected January 18, 1845, to fill unexpired term ending March 3, 1845; produced credentials and took seat January 27, 1845.

58. Joseph W. Chalmers, Mississippi.—Appointed November 3, 1845; produced credentials and took seat December 1, 1845; death of Robert J. Walker. Mr. Chalmers elected January 10, 1846, to fill unexpired term ending March 3, 1847; credentials dated January 16, 1846; produced credentials and took seat February 4, 1846.

59. Benning W. Jenness, New Hampshire.—Appointed November 12, 1845; produced credentials and took seat December 1, 1845; resignation of Levi Woodbury. Joseph Cilley elected to fill unexpired term ending March 3, 1847; credentials dated June 13, 1846; produced credentials and took seat June 22, 1846.

60. Jefferson Davis, Mississippi.—Appointed August 10, 1847; produced credentials and took seat December 6, 1847; death of Jesse Speight. Mr. Davis elected January 11, 1848, to fill unexpired term ending March 3, 1851; credentials dated January 31, 1848; produced credentials and took seat February 15, 1848.

61. Roger S. Baldwin, Connecticut.—Appointed November 11, 1847; produced credentials and took seat December 7, 1847; death of Jabez W. Huntington. Mr. Baldwin elected first Wednesday of May, 1848, to fill unexpired term ending March 3, 1851; credentials dated June 1, 1848; produced credentials and took seat June 5, 1848.

62. Wyman B. S. Moor, Maine.—Appointed January 5, 1848; produced credentials and took seat January 17, 1848; death of John Fairfield. Hannibal Hamlin elected May 26, 1848, to fill unexpired term ending March 3, 1851; produced credentials and took seat June 12, 1848.

63. Herschell V. Johnson, Georgia.—Appointed February 4, 1848; produced credentials and took seat February 14, 1848; resignation of Walter T. Colquitt. Under these credentials Mr. Johnson held the seat for the remainder of the term ending March 3, 1849. William C. Dawson had been elected for the succeeding term on November 13, 1847.

64. Solon Borland, Arkansas.—Appointed March 30, 1848; produced credentials and took seat April 24, 1848; resignation of Ambrose H. Sevier. Mr. Borland elected November 17, 1848, to fill unexpired term ending March 3, 1849; credentials dated November 20, 1849; produced credentials and took seat December 11, 1848.

65. William K. Sebastian, Arkansas.—Appointed May 12, 1848; produced credentials and took seat May 31, 1848; death of Chester Ashley. Mr. Sebastian elected November 17, 1848, to fill unexpired term ending March 3, 1853; credentials dated November 20, 1848; produced credentials and took seat December 21, 1848.

66. Thomas Fitzgerald, Michigan.—Appointed June 8, 1848; produced credentials and took seat June 20, 1848; resignation of Lewis Cass. Lewis Cass elected January 20, 1849, to fill his own unexpired term ending March 3, 1851; produced credentials and took seat March 3, 1849.

67. Thomas Metcalfe, Kentucky.—Appointed June 23, 1848; produced credentials and took seat July 3, 1848; resignation of John J. Crittenden. Mr. Metcalfe elected January 3, 1849, to fill unexpired term ending March 3, 1849; credentials dated January 3, 1849; produced credentials and took seat January 26, 1849.

68. William R. King, Alabama.—Appointed July 1, 1848; produced credentials and took seat July 13, 1848, resignation of Arthur P. Bagby. Under these credentials Mr. King held his seat the remainder of the term ending March 3, 1849. He was elected for succeeding term November 30, 1849. The seat was vacant during the special session of the Senate in 1849.

69. Benjamin Fitzpatrick, Alabama.—Appointed November 25, 1848; produced credentials and took seat December 11, 1848; death of Dixon H. Lewis. Jeremiah Clemens elected to fill unexpired term ending March 3, 1853; credentials dated November 30, 1849; produced credentials and took seat December 6, 1849.

70. David Stewart, Maryland.—Appointed December 6, 1849; produced credentials and took seat December 8, 1849; resignation of Reverdy Johnson. Thomas G. Pratt elected to fill unexpired term ending March 3, 1851; credentials dated January 12, 1850; produced credentials and took seat January 14, 1850.

71. Franklin H. Elmore, South Carolina.—Appointed April 11, 1850; credentials read April 16, 1850; took seat May 6, 1850; death of John Caldwell Calhoun. Robert W. Barnwell appointed June 4, 1850, on death of Franklin H. Elmore; produced credentials and took seat June 24, 1850. R. Barnwell Rhett elected December 18, 1850, for unexpired term of J. C. Calhoun ending March 3, 1853; credentials dated December 20, 1850; produced credentials and took seat January 6, 1851.

72. Robert W. Barnwell, South Carolina.—Appointed June 4, 1850; produced credentials and took seat June 24, 1850; death of Franklin H. Elmore, who had been appointed by governor to fill vacancy happening by death of John Caldwell Calhoun. Robert Barnwell Rhett elected December 18, 1850, for remainder of term of J. C. Calhoun ending March 3, 1853; credentials dated December 20, 1850; produced credentials and took seat January 6, 1851.

73. Robert C. Winthrop, Massachusetts.—Appointed July 27, 1850; produced credentials and took seat July 30, 1850; resignation of Daniel Webster. Robert Rantoul elected February 1, 1851, to fill unexpired term ending March 3, 1851; credentials read February 7, 1851; took seat February 22, 1851.

74. John I. McRae, Mississippi.—Appointed December 1, 1851; produced credentials and took seat December 19, 1851; resignation of Jefferson Davis. Stephen Adams elected February 19, 1852, to fill unexpired term ending March 3, 1857; produced credentials and took seat March 17, 1852.

75. William F. Desaussure, South Carolina.—Appointed May 10, 1852; produced credentials and took seat May 24, 1852; resignation of R. Barnwell Rhett. Mr. Desaussure elected November 29, 1852, to fill unexpired term ending March 3, 1853; credentials dated December 9, 1852; produced credentials and took seat December 20, 1852.

76. Robert M. Charlton, Georgia.—Appointed May 18, 1852; produced credentials and took seat June 11, 1852; resignation of John M. Berrien. Under these credentials Mr. Charlton held the seat the remainder of the term ending March 3, 1853. Robert Toombs had on November 10, 1851, been elected for succeeding term.

77. David Meriwether, Kentucky.—Appointed July 6, 1852; produced credentials and

took seat July 15, 1852; death of Henry Clay. Under these credentials Mr. Meriwether held the seat till September 1, 1852. Archibald Dixon had been elected December 30, 1851, to fill unexpired term ending March 3, 1855, about to result from resignation of Mr. Clay, which had been made and was to take effect the first Monday in September, 1852. Mr. Dixon's credentials read December 6, 1852; took seat December 20, 1852.

78. Charles W. Cathcart, Indiana.—Appointed November 23, 1852; produced credentials and took seat December 6, 1852; death of James Whitcomb. John Pettit elected January 11, 1853, to fill unexpired term ending March 3, 1855; credentials dated January 11, 1855; produced credentials and took seat January 18, 1853.

79. Samuel S. Phelps, Vermont.—Appointed January 17, 1853; produced credentials and took seat January 17, 1853; death of William Upham. Lawrence Brainerd elected to fill unexpired term ending March 3, 1855; credentials dated October 14, 1854; produced credentials and took seat December 4, 1854.

80. Benjamin Fitzpatrick, Alabama.—Appointed January 14, 1853; produced credentials and took seat January 20, 1853; resignation of William R. King. Mr. Fitzgerald elected to fill unexpired term ending March 3, 1855; credentials dated December 12, 1853; produced credentials and took seat December 19, 1853.

81. Robert W. Johnson, Arkansas.—Appointed July 6, 1853; produced credentials and took seat December 5, 1853; resignation of Solon Borland. Mr. Johnson elected November 10, 1854, to fill unexpired term ending March 3, 1855; credentials dated November 24, 1854; produced credentials and took seat December 18, 1854.

82. Jared W. Williams, New Hampshire.—Appointed November 29, 1853; produced credentials and took seat December 12, 1853; death of Charles G. Atherton. Under these credentials Mr. Williams held the seat until August 4, 1854, when it was determined that the "right of representation under appointment" had expired. John P. Hale elected to fill unexpired term ending March 3, 1859; credentials dated July 30, 1855; produced credentials and took seat December 4, 1855.

83. Julius Rockwell, Massachusetts.—Appointed June 3, 1854, produced credentials and took seat June 15, 1854; resignation of Edward Everett. Henry Wilson elected to fill unexpired term ending March 3, 1859; credentials dated February 1, 1855; produced credentials and took seat February 10, 1855.

84. John S. Wells, New Hampshire.—Appointed January 16, 1855; produced credentials and took seat January 22, 1855; death of Moses Norris. Under these credentials Mr. Wells held the seat the remainder of the term ending March 3, 1855. James Bell elected for succeeding term; credentials dated July 30, 1855.

85. Joseph P. Comegys, Delaware.—Appointed November 19, 1856; produced credentials and took seat December 4, 1856; death of John W. Clayton. Martin W. Bates elected January 14, 1857, to fill unexpired term ending March 3, 1859; credentials dated January 14, 1857; credentials read January 19, 1857; took seat December 6, 1858.

86. Thomas L. Clingman, North Carolina.—Appointed May 6, 1858; produced credentials and took seat May 7, 1858; resignation of Asa Biggs. Mr. Clingman elected to fill unexpired term ending March 3, 1861; credentials dated November 23, 1858; produced credentials and took seat December 6, 1858.

87. Arthur P. Hayne, South Carolina.—Appointed May 11, 1858; produced credentials and took seat May 20, 1858; death of Josiah J. Evans. James Chestnut, jr., elected December 4, 1858, to fill unexpired term ending March 3, 1859; credentials dated December 7, 1858; produced credentials and took seat January 5, 1859.

88. Matthias Ward, Texas.—Appointed September 27, 1858; produced credentials and took seat December 6, 1858; death of J. Pinkney Henderson. Louis T. Wigfall elected December 5, 1859, to fill unexpired term ending March 3, 1863; credentials dated December 8, 1859; produced credentials and took seat January 4, 1860.

89. Henry P. Haun, California.—Appointed November 3, 1859; produced credentials and took seat December 5, 1859; death of David C. Broderick. Milton S. Latham elected January 11, 1860, to fill unexpired term ending March 3, 1863; credentials dated January 14, 1860; produced credentials and took seat March 5, 1860.

90. Orville H. Browning, Illinois.—Appointed June 26, 1861; produced credentials and took seat July 4, 1861; death of Stephen A. Douglas. William A. Richardson elected January 12, 1863, to fill unexpired term ending March 3, 1865; credentials dated January 12, 1863; produced credentials and took seat January 30, 1863.

91. Robert Wilson, Missouri.—Appointed January 17, 1862; produced credentials and took seat January 24, 1862; expulsion of Waldo P. Johnson. B. Gratz Brown elected November 13, 1863, to fill unexpired term ending March 3, 1867; credentials dated November 14, 1863; produced credentials and took seat December 14, 1863.

92. John B. Henderson, Missouri.—Appointed January 17, 1862; produced credentials and took seat January 29, 1862; expulsion of Trusten Polk. Mr. Henderson elected January 6, 1863, to fill unexpired term ending March 3, 1863; credentials dated February 12, 1863; produced credentials and took seat February 18, 1863.

93. Benjamin Stark, Oregon.—Appointed October 29, 1861; credentials presented January 6, 1862; took seat February 27, 1862; death of E. D. Baker. Benjamin F. Harding elected September 12, 1862, to fill unexpired term ending March 3, 1865; credentials dated September 26, 1862; produced credentials and took seat December 1, 1862.

94. Joseph A. Wright, Indiana.—Appointed February 24, 1862; produced credentials and took seat March 3, 1862; expulsion of Jesse D. Bright. David Turpie elected January 14, 1863, to fill unexpired term ending March 3, 1863; credentials dated January 14, 1863; produced credentials and took seat January 22, 1863.

95. Richard S. Field, New Jersey.—Appointed November 21, 1862; produced credentials and took seat December 1, 1862; death of John R. Thompson. James W. Wall elected January 14, 1863, to fill unexpired term ending March 3, 1863; produced credentials and took seat January 21, 1863.

96. Thomas H. Hicks, Maryland.—Appointed December 29, 1862; produced credentials and took seat January 14, 1863; death of James A. Pearce. Mr. Hicks elected to fill unexpired term ending March 3, 1867; produced credentials and took seat January 19, 1864.

97. Nathan A. Farwell, Maine.—Appointed October 27, 1864; produced credentials and took seat December 5, 1864; resignation of William Pitt Fessenden. Mr. Farwell elected January 11, 1865, to fill unexpired term ending March 3, 1865; credentials dated January 12, 1865; produced credentials and took seat February 6, 1865.

98. Luke P. Poland, Vermont.—Appointed November 21, 1865; produced credentials and took seat December 4, 1865; death of Jacob Collamer. Mr. Poland elected October 24, 1866, to fill unexpired term ending March 3, 1867; produced credentials and took seat December 3, 1866.

99. George F. Edmunds, Vermont.—Appointed April 3, 1866; produced credentials and took seat April 5, 1866; death of Solomon Foot. Mr. Edmunds elected October 24, 1866, to fill unexpired term ending March 3, 1869; credentials dated October 24, 1866; produced credentials and took seat December 3, 1866.

100. Edmund G. Ross, Kansas.—Appointed July 19, 1866; produced credentials and took seat July 25, 1866; death of James H. Lane. Mr. Ross elected January 23, 1867, to fill unexpired term ending March 3, 1871; credentials dated January 24, 1867; produced credentials and took seat February 14, 1867.

101. George G. Fogg, New Hampshire.—Appointed August 31, 1866; produced credentials and took seat December 3, 1866; resignation of Daniel Clark. Mr. Fogg held the seat under these credentials the remainder of the term ending March 3, 1867. James W. Patterson had on August 29, 1866, been elected for succeeding term.

102. F. T. Frelinghuysen, New Jersey.—Appointed November 12, 1866; produced credentials and took seat December 3, 1866; death of William Wright. Mr. Frelinghuysen elected to fill unexpired term ending March 3, 1869; credentials dated January 23, 1867; produced credentials and took seat January 24, 1867.

103. James A. Bayard, Delaware.—Appointed April 5, 1867; produced credentials and took seat April 11, 1867; death of George Read Riddle. Mr. Bayard elected January 19, 1869, to fill unexpired term ending March 3, 1869; credentials dated January 20, 1869; produced credentials and took seat January 22, 1869.

104. William Pinkney Whyte, Maryland.—Appointed July 13, 1868; produced credentials and took seat July 14, 1868; resignation of Reverdy Johnson. Under these credentials Mr. Whyte held the seat the remainder of the term ending March 3, 1869. William T. Hamilton had been elected for the succeeding term; credentials dated February 7, 1868.

105. Lot M. Morrill, Maine.—Appointed October 30, 1869; produced credentials and took seat December 6, 1869; death of William Pitt Fessenden. Mr. Morrill elected January 19, 1870, to fill unexpired term ending March 3, 1871; produced credentials and took seat January 24, 1870.

106. William Windom, Minnesota.—Appointed July 16, 1870; produced credentials and took seat December 5, 1870; death of Daniel S. Norton. O. P. Stearns elected January 18, 1871, to fill unexpired term ending March 3, 1871; produced credentials and took seat January 25, 1871.

107. Daniel T. Jewitt, Missouri.—Appointed December 19, 1870; produced credentials and took seat December 22, 1870; resignation of Charles D. Drake. Francis P. Blair elected to fill unexpired term ending March 3, 1873; credentials dated January 20, 1871; credentials read January 24, 1871; took seat January 25, 1871.

108. Willis B. Machen, Kentucky.—Appointed September 27, 1872; produced credentials and took seat December 2, 1872; death of Garrett Davis. Mr. Machen elected January 21, 1873, to fill unexpired term ending March 3, 1873; credentials dated February 3, 1873; produced credentials and took seat February 10, 1873.

109. Robert Crozier, Kansas.—Appointed November 24, 1873; produced credentials and took seat December 1, 1873; resignation of Alexander Caldwell. James M. Harvey

elected February 2, 1874, to fill unexpired term ending March 3, 1877; credentials dated February 7, 1874; produced credentials and took seat February 12, 1874.

110. William W. Eaton, Connecticut.—Appointed February 10, 1875; produced credentials and took seat February 13, 1875; death of William A. Buckingham. Under this appointment Mr. Eaton held his seat during the remainder of the term ending March 3, 1875. He had been elected May 20, 1874, for the succeeding term.

111. David M. Key, Tennessee.—Appointed August 18, 1875; produced credentials and took seat December 6, 1875; death of Andrew Johnson. James E. Bailey elected January 19, 1877, to fill unexpired term ending March 3, 1881; credentials dated January 20, 1877; credentials read January 24, 1877; took seat January 29, 1877.

112. James E. English, Connecticut.—Appointed November 27, 1875; produced credentials and took seat December 7, 1875; death of Orris S. Ferry. William H. Barnum elected May 16, 1876, to fill unexpired term ending March 3, 1879; credentials dated May 17, 1876; produced credentials and took seat May 22, 1876.

113. Robert H. Marr, Louisiana.—Appointed December 16, 1875; credentials read December 20, 1875; resignation of William L. McMillen. Neither Mr. McMillen nor Mr. Marr was admitted.

114. James G. Blaine, Maine.—Appointed July 10, 1876; credentials read July 12, 1876; took seat December 4, 1876; resignation of Lot M. Morrill. Mr. Blaine elected January 16, 1877, to fill unexpired term ending March 3, 1877; credentials dated January 17, 1877; credentials read January 19, 1877; took seat January 22, 1877.

115. Samuel Price, West Virginia.—Appointed August 26, 1876; produced credentials and took seat December 4, 1876; death of Allen T. Caperton. Frank Hereford elected January 26, 1877, to fill unexpired term ending March 3, 1881; credentials dated January 29, 1877; produced credentials and took seat January 31, 1877.

116. David H. Armstrong, Missouri.—Appointed September 29, 1877; produced credentials and took seat October 16, 1877; death of Louis V. Bogy. Under these credentials Mr. Armstrong held the seat the remainder of the term ending March 3, 1879. George G. Vest elected January 22, 1879, for succeeding term.

117. Daniel W. Voorhees, Indiana.—Appointed November 6, 1877; produced credentials and took seat November 12, 1877; death of Oliver P. Morton. Mr. Voorhees elected to fill unexpired term ending March 3, 1879; credentials dated January 31, 1879; produced credentials and took seat February 3, 1879.

118. Charles H. Bell, New Hampshire.—Appointed March 13, 1879; credentials read March 18, 1879; took seat April 10, 1879; expiration of term of Bainbridge Wadleigh, ending March 3, 1879, and non-election of a successor. Henry W. Blair elected June 17, 1879, for term ending March 3, 1885; credentials dated June 18, 1879; produced credentials and took seat June 20, 1879.

119. Henry P. Baldwin, Michigan.—Appointed November 17, 1879; produced credentials and took seat December 3, 1879; death of Zachariah Chandler. Mr. Baldwin elected January 18, 1881, to fill unexpired term ending March 3, 1881; credentials dated January 20, 1881; produced credentials and took seat January 31, 1881.

120. Luke Pryor, Alabama.—Appointed January 7, 1880; produced credentials and took seat January 15, 1880; death of G. S. Houston. James L. Pugh elected November 24, 1880, to fill unexpired term ending March 3, 1885; credentials dated November 29, 1880; produced credentials and took seat December 6, 1880.

121. Joseph E. Brown, Georgia.—Appointed May 21, 1880; produced credentials and took seat May 26, 1880; resignation of John B. Gordon. Mr. Brown elected November 16, 1880, to fill unexpired term ending March 3, 1885; credentials dated December 2, 1880; produced credentials and took seat December 6, 1880.

122. Thomas Courtland Manning, Louisiana.—Appointed November 16, 1880; credentials read December 7, 1880; death of Henry M. Spofford, claimant of seat held by William Pitt Kellogg. Mr. Manning not admitted. Mr. Kellogg held the seat during the term.

123. James W. McDill, Iowa.—Appointed March 8, 1881; produced credentials and took seat March 14, 1881; resignation of Samuel J. Kirkwood. Mr. McDill elected January 18, 1882, to fill unexpired term ending March 3, 1883; credentials dated January 19, 1882; produced credentials and took seat January 24, 1882.

124. Alonzo J. Edgerton, Minnesota.—Appointed March 12, 1881; produced credentials and took seat March 17, 1881; resignation of William Windom. William Windom elected October 26, 1881, to fill his own unexpired term ending March 3, 1883; credentials dated October 27, 1881; produced credentials and took seat December 5, 1881.

125. George M. Chilcott, Colorado.—Appointed April 11, 1882; produced credentials and took seat April 17, 1882; resignation of Henry M. Teller. Horace A. W. Tabor elected January 27, 1883, to fill unexpired term ending March 3, 1883; credentials dated January 27, 1883; produced credentials and took seat February 2, 1883.

126. William P. Sheffield, Rhode Island.—Appointed November 19, 1884; credentials

read December 1, 1884; took seat December 2, 1884; death of Henry B. Anthony. Jonathan Chace elected January 20, 1885, to fill unexpired term ending March 3, 1889; credentials dated January 21, 1885; credentials read January 24, 1885; took seat January 26, 1885.

127. Henry W. Blair, New Hampshire.—Appointed March 5, 1885; credentials read March 9, 1885; took seat March 10, 1885; expiration of his previous term, ending March 3, 1885, and non-election of a successor. Mr. Blair elected June 16, 1885.

128. E. C. Walthall, Mississippi.—Appointed March 9, 1885; produced credentials and took seat March 12, 1885; resignation of L. Q. C. Lamar. Election to fill unexpired term ending March 3, 1889, not yet [December 1, 1885] taken place.

SENATE ELECTION CASES.

II.

MISCELLANEOUS CASES.

[Third Congress—First session.]

ALBERT GALLATIN,

Senator from Pennsylvania from December 2, 1793, *to February* 28, 1794.

Albert Gallatin, a native of Geneva, came to Boston, Mass., in 1780. After changing his residence a few times he went, in November, 1783, to Virginia, where he had purchased lands. In October, 1785, he took an oath of allegiance to Virginia. In December, 1785, he purchased a plantation in Fayette County, Pennsylvania, on which he was living in 1793. On the 28th of February, 1793, he was elected from that State to the Senate of the United States, which office he held until February 28, 1794, when it was determined that he was not entitled to his seat, not having been "nine years a citizen of the United States."

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Annals of Congress, 3d Cong., 1793–'95, within pages 9–61.

It will be observed that the Senate resolved that the doors of the Senate be opened during the discussion upon this contested election. A discussion of the merits of this case, and of the decision of the Senate regarding it, may be found in the "Life of Albert Gallatin," by Henry Adams, pages 119, 120.

MONDAY, *December* 2, 1793.

The Vice-President administered the oath required by law to Mr. Gallatin, and he took his seat.

The Vice-President laid before the Senate the petition of Conrad Laub and others, relative to the appointment of Mr. Gallatin, a Senator of the United States; which was read and ordered to lie on the table.

WEDNESDAY, *December* 11, 1793.

Ordered, That Messrs. Rutherfurd, Cabot, Ellsworth, Livermore, and Mitchell be a committee to take into consideration the petition of Conrad Laub and others, stating that the Hon. Albert Gallatin, at the time he was elected a Senator of the United States, had not been nine years a citizen of the said United States, as is required by the Constitution, and report thereon to the Senate.

TUESDAY, *December* 31, 1793.

Mr. Rutherfurd reported, from the committee to whom was referred the petition of Conrad Laub and others, stating that the Hon. Albert Gallatin, at the time he was elected a Senator of the United States, had not been nine years a citizen of the said United States, as is required by the Constitution; which report was read and ordered to lie for consideration.

WEDNESDAY, *January* 1, 1794.

The Senate proceeded to the consideration of the report of the committee to whom was referred the petition of Conrad Laub and others.

On motion to postpone the consideration of the report until to-morrow, it was agreed to amend this motion by striking out the word "to-morrow," and to insert in lieu thereof, "Thursday, the 9th instant."

THURSDAY, *January* 9, 1794.

Agreeably to the order of the day, the Senate took into consideration the report of the committee on the petition of Conrad Laub and others, respecting the appointment of Albert Gallatin to be a Senator of the United States.

On motion,

Ordered, That the further consideration of the report be postponed until to-morrow.

FRIDAY, *January* 10, 1794.

The Senate resumed the consideration of the report of the committee on the petition of Conrad Laub and others, respecting the appointment of Albert Gallatin, a Senator of the United States; which report is as follows:

REPORT OF SELECT COMMITTEE.

[This committee consisted of Messrs. Rutherford, Cabot, Ellsworth, Livermore, and Mitchell.]

The committee, to whom was referred the petition of Conrad Laub and others, stating that Albert Gallatin, at the time he was elected a Senator of the United States, had not been nine years a citizen of the said United States, as is required by the Constitution, report:

That the committee have conferred with Mr. Michael Schmyser, agent for the petitioners, and with Mr. Gallatin; that Mr. Schmyser has declared that the petitioners are ready to adduce proofs in support of the petition at such time as the Senate may think proper to appoint; that Mr. Gallatin states no objection to the trial's commencing at an early day. The committee therefore recommend that the Senate agree to the following resolution:

Resolved, That —— be assigned for hearing the petition of Conrad Laub and others, respecting Mr. Gallatin's right to a seat in the Senate, and that Messrs. Gallatin and Schmyser be furnished with a copy of this resolution.

On motion, it was agreed to postpone the report of the committee, and to take into consideration the following resolution:

"*Resolved*, That a committee of elections, to consist of seven, be appointed to report rules for receiving petitions and conducting inquiries relative to the qualifications of a Senator; and that the petition of Conrad Laub and others be referred to the same committee, to state the facts, and that they be authorized to send for persons and papers."

On which a motion was made and seconded to postpone this motion and to take up the following:

"That —— be a committee to ascertain and state to the Senate the facts relative to the time when Albert Gallatin became a citizen of the United States, and that the said committee have power to send for persons and papers."

Whereupon a motion was made and seconded to postpone the preceding, and to take into consideration the following motion:

"*Resolved*, That a committee of elections be appointed, and that the petition of Conrad Laub and others be referred to it, to report their opinion on the merits of the said petition."

And, after debate, the Senate adjourned.

MONDAY, *January* 13, 1794.

The Senate resumed the consideration of the petition of Conrad Laub and others, respecting the appointment of Mr. Gallatin to be a Senator of the United States.

On motion,

Ordered, That a committee of elections, to consist of seven, be appointed, and that the petition of Conrad Laub and others be referred, without prejudice as to any questions which may, upon the hearing, be raised by the sitting member, as to the sufficiency of the parties and the matter charged in the petition, to the same committee, to state the facts, and that they be authorized to send for persons and papers; also, that Messrs. Bradley, Ellsworth, Mitchell, Rutherfurd, Brown, Livermore, and Taylor be this committee.

MONDAY, *February* 10, 1794.

Mr. Bradley reported from the committee to whom was referred the petition of Conrad Laub and others, respecting the appointment of Mr. Gallatin to be a Senator of the United States; and the report was read.

Ordered, That Wednesday next be assigned to take this report into consideration, and that in the mean time it be printed for the use of the Senate.

On motion that the Senate adopt the following resolution:

"*Resolved*, That the doors of the Senate be opened, and continue open, during the discussion upon the contested election of Albert Gallatin,"

Ordered, That this motion lie on the table until to-morrow.

TUESDAY, *February* 11, 1794.

Agreeably to the order of the day, the Senate took into consideration the motion made yesterday that the doors of the Senate be opened during the discussion of the contested election of Mr. Gallatin. Whereupon,

Resolved, That the doors of the Senate be opened, and continue open, during the discussion upon the contested election of Albert Gallatin.

WEDNESDAY, *February* 12, 1794.

On motion that the consideration of the report of the committee on the petition of Conrad Laub and others respecting the appointment of Mr. Gallatin to be a Senator of the United States be postponed until Monday next, it was passed in the affirmative.

MONDAY, *February* 17, 1794.

The petition of Michael Schmyser, agent for Conrad Laub and others, petitioners against the election of Albert Gallatin to be a Senator of the United States, was presented and read, praying to be heard by counsel.

Ordered, That the prayer of the petition be granted.

The consideration of the report of the committee on the petition of Conrad Laub and others, respecting the election of Mr. Gallatin to be a Senator of the United States, was resumed, and, after progress, it was ordered that the consideration thereof be postponed until Wednesday next.

WEDNESDAY, *February* 19, 1794.

Agreeably to the order of the day, the Senate resumed the consideration of the report of the committee on the petition of Conrad Laub and others, respecting the election of Mr. Gallatin to be a Senator of the United States.

Ordered, That the consideration thereof be further postponed until to-morrow.

THURSDAY, *February* 20, 1794.

Agreeably to the order of the day, the Senate resumed the consideration of the report of the committee on the petition of Conrad Laub and others, respecting the election of Mr. Gallatin to be a Senator of the United States.

The report of the committee states the evidence, and concludes with an opinion that to controvert the allegations set forth in the petition against Mr. Gallatin it lays with him to prove his citizenship.

Accordingly Mr. Gallatin presented a written statement of facts, which the President of the Senate read. It contained a narrative of several transactions from the time of Mr. Gallatin's arrival in the Province of Maine, or Massachusetts, about thirteen years ago; of his having contributed by money and his own services as a volunteer in the cause of the Revolution; of his having taken oaths of allegiance and purchased lands in that State, and also in the State of Virginia. In the back parts of the last-mentioned State he had formed an interesting settlement, and had been extremely useful in bringing settlers from Europe. The dates of those transactions and times of his arrival in Pennsylvania and of being sent to the State convention are also recited, up to the time of his being chosen one of their representatives in the Senate of the United States.

After the President had done reading the statement of facts, Mr. Gallatin addressed the Senate by observing that he felt himself rather in an awkward predicament, not knowing whether the counsel for the prosecutors or himself were the proper persons to speak the first, as this preliminary was not yet laid down by the Senate; neither had he provided any counsel. He should have supposed himself in the situation of defendant were it not that the weight of proving the affirmative in regard to citizenship had been laid on him, under which predicament it might perhaps be necessary for him to begin, and after the counsel for the petitioners had spoken that he should then be allowed to close the arguments.

Mr. Livermore was of opinion that the sitting member should begin the debate, as the *onus probandi* lay with him.

The counsel for the petitioners, Mr. Lewis, rose. He was attended by Mr. Schmyser, one of the members of the senate of Pennsylvania, who, we understand, manages the prosecution on the part of the petitioners. Mr. Lewis hoped he would be permitted to say a few words in the early stage of the business in regard to the manner of conducting it. He recapitulated sundry offices and posts of honor that had been conferred on him, from which he humbly presumed he had gathered much experience, and particularly in cases of contested elections. He would, therefore, beg leave of the honorable Senate to offer an observation before they should determine on the mode of conducting the trial. When the question for postponement, which was debated the other day, was before them the sitting member did then consider himself as defendant, and for an hour had fought

phantoms of his own imagination; but now he has changed his ground and desires to have the privileges which belong to the petitioners only, namely, the right of opening the prosecution and afterwards concluding the arguments.

Mr. Gallatin submitted to the decision of the Senate, and said he did not wish to contend for mere matters of form.

Mr. Martin, from North Carolina, thought it immaterial who began or concluded, if in the end the Senate should be enabled to arrive at a just degree of information.

Mr. Jackson, from Georgia, made some observations on the manner of conducting the business. He thought it would be incumbent on the counsel for the petitioners to prove that Mr. Gallatin was not a citizen, &c.

Mr. King, from New York, and some other gentleman of the Senate said a few more words on the motion; it was agreed that the sitting member should begin.

Mr. Gallatin accordingly rose and recapitulated the facts stated in the written paper which he had presented to the President, commenting on each of them as he proceeded. He proved that he had been an inhabitant of the United States for thirteen years, and was one before the peace of 1783 and before the Confederation. He quoted the laws previous thereto respecting aliens, and also the British statutes, and he maintained that they were all done away by the Revolution. He conceived himself a citizen in common with the other citizens of the United States from the time of his first qualifying after his arrival and attachment to the country. He concluded by saying he would reserve the remainder of his defense until after he should hear the counsel on behalf of the petitioners.

Mr. Lewis commenced his speech by observing that he appeared there on behalf of Conrad Laub and other respectable men who complained of the unconstitutionality of admitting Mr. Gallatin to a seat in the Senate. He was glad to find by the gentleman's expressions that the ground of debate had been narrowed into so small a compass, and he would therefore take him up from the argument where he had left off speaking, that of his being a citizen in common of the United States from the time of his qualifying in Massachusetts or Virginia. But in Virginia two oaths are required, and they must be taken in a court, not before a magistrate, to entitle a man to citizenship. He must also be possessed of a certain quantity of property and be a resident for two years. It appears Mr. Gallatin did not remain in Virginia more than two months. [Here Mr. Lewis read the law of Virginia of the 20th October, 1783.] On this law Mr. Lewis argued that Mr. Gallatin had not gone through the necessary qualifications to entitle him to citizenship there; and he observed that he admired the gentleman's candor in not insisting on it here. In this State he had certainly not qualified himself agreeably to the law. Under these circumstances Mr. Lewis, for his part, could never admit of the gentleman's right to citizenship so far back as to entitle him to the suffrage of a vote for a seat in the Senate, &c.

The mischievous consequences of permitting such innovations he represented in strong terms; and he called to the recollection of the Senate the conduct of ancient and modern governments on this question. One of the ancient republics made it death for an alien to intermeddle in their politics. The sentiments of antiquity and those of men in modern days proved the justice of these conclusions.

With regard to the arguments of the gentleman respecting his being entitled to be a citizen of the Union, or of any individual State of it, because he had qualified himself to be a citizen of one of them, Mr. Lewis said was a mere bubble, for surely the gentleman was not one of the mass of citizens at the accomplishment of independence.

The doctrine of the old law, which the gentleman says was done away by the Revolution, in respect to aliens may have been so with regard to the British king; it was still, however, virtually in force against the gentleman. But, supposing it to be done away, how do the constitutions of the different States stand on this head? Is it not implied by all of them that certain oaths, residence, and property make the requisites to form citizenship? In Massachusetts a foreigner is not a citizen without he complies with those terms. [Here he quoted page 70 of the small volume of the laws of Massachusetts. He also cited the act in favor of John Jarvis and others; also page 104 of the same book and pages 191 and 192.] From these he maintained that no such wild idea was ever contemplated by either the law of Massachusetts or Virginia as to admit foreigners or persons from other States to citizenship immediately on their entrance within their limits.

The situation of the sitting member with respect to the constitution and laws of Pennsylvania he had little doubt was similar to what he had mentioned in regard to the other States, although he would not assert it as a fact. [He read the forty-second section and also in page 43 of the Law of Pennsylvania, 13th of March, 1789, a proviso which contains some precautions requiring records to be kept by the master of the rolls of the persons admitted to citizenship.] The same principle pervades all the States as well as it does the Constitution of the United States. The absurdity of applying it in any other sense was severely pictured by Mr. Lewis, and to admit the idea advanced by the sitting

member was as inadmissible as it was novel. In support of what he wished to impress on the minds of the Senate Mr. Lewis quoted the first volume of the Journals of Congress in 1774 and 1775, pages 28 and 29. He then recurred to Blackstone, vol. 1, pages 63, 64, and 69; also 73 and 79.

It was not his intention to quote the parliamentary laws of England in support of anything, but such parts of their common law as could be got over—that common law of England which was imported by our ancestors and handed down to them by the people, not the Parliament. The people had made the common law from time to time. The Saxons, Normans, &c., were all concerned in making and improving it until it had finally reached that degree of perfection in which it was given to us by our ancestors, and it was founded in wisdom and justice.

Mr. Lewis next quoted first Blackstone, 402, which was one of the British laws that had never been admitted in this country and which he hoped never would, viz: That wherein the distinction is drawn between the commoner and the peer, an oath being required of the commoner upon all occasions, and no more than "upon my honor" from a peer, except in giving evidence in civil or criminal trials.

Mr. Lewis concluded by saying that the difficulties which stood between Mr. Gallatin and his seat were insurmountable and could not be removed without showing a law of Massachusetts, Virginia, &c., repealing those laws in regard to the qualification of citizens which he had mentioned, but which repeal he was certain did not exist. He therefore stated that to insist upon the gentleman's right to a seat was both novel and absurd. These were his opinions, which he had given in a perfectly extempore way, not having been allowed time nor expecting to meet the subject on the new ground which it had this day taken in the Senate.

Mr. Gallatin said he would pledge himself to the Senate to prove that the grounds of his arguments and his construction of the confederation and laws of the States was neither novel nor absurd, except in Mr. Lewis's construction of them, but had been admitted in many instances. However, as the common law of England was now introduced by Mr. Lewis, which was new ground to him, and as the hour of adjournment was nearly approaching, he would beg leave to make his reply to-morrow.

On motion, the further consideration of this subject was postponed until to-morrow.

FRIDAY, *February* 21, 1794.

Agreeably to the order of the day, the Senate resumed the consideration of the report of the committee on the petition of Conrad Laub and others, respecting the election of Mr. Gallatin to be a Senator of the United States.

Mr. Gallatin commenced his defense by laying down the principles on which he intended to argue. His was a very serious situation for a person to be placed in who had been so long in America and who had mingled with the inhabitants in the common cause, that he should afterwards be called before so solemn a tribunal with an intention to wrest from him his right of citizenship. He confessed that on this occasion his feelings were deeply interested, particularly as the manner of the counsel for the prosecutors was so personal and went not only to deny him a seat in the Senate of the United States, but even to contest his citizenship and denounce him as being yet an alien.

This was a matter of consequence to many thousands as well as himself who have long considered themselves in possession of all the privilege of denizens and yet may be deprived of their rights if the doctrines of the counsel for the prosecutors should obtain any sanction from the body who were now to judge of its merits.

Mr. Gallatin entered into a series of observations on the various points of law, &c., which had been adduced by Mr. Lewis, and he particularly remarked that the common law of England was entirely inapplicable to the subject under consideration. He read the laws of Virginia respecting naturalization, &c., from which he insisted that he had long since become a citizen of the United States. He also quoted first Blackstone, page 374, and Viner's Abridgment, Vol. II, page 266, respecting the different acceptations of denizen and citizen, and he went back so far as the British statutes in 1740 to show the intention of the old government was to naturalize all persons who would go and reside in the Colonies. He next mentioned the act of Pennsylvania of 31st of August, 1778, and commented on the principles generally entertained by most writers on the subjects of allegiance and citizenship—Blackstone, 266, &c.

An alien is a man born out of the allegiance of the king. But allegiance in England is not an allegiance to the country or to society as it is understood in this country.

In order to explain the principle of reciprocity, he observed that when the two crowns of England and Scotland were united under James the inhabitants of Scotland became naturalized in England as if they had been natural-born subjects of that country. The allegiance in Britain was personal to the king, and it has there this remarkable quality that by the British laws allegiance can never be shaken off.

This country, before the Revolution, owed allegiance to the king, but that was de-

stroyed by the Declaration of Independence, and then the inhabitants of the States became mutually citizens of every State reciprocally; and they continued so until such time as the States made laws of their own afterwards respecting naturalization.

As soon as separate governments existed allegiance was due to each, and here the allegiance was a reality, it was to the Government and to society, whereas in Britain it is merely fictitious, being only to one man.

Every man who took an active part in the American Revolution was a citizen according to the great laws of reason and of nature, and when afterwards positive laws were made they were retrospective in regard to persons under this predicament; nor did those posterior laws invalidate the rights which they enjoy under the Confederation.

Mr. Gallatin here mentioned his having been an inhabitant of Massachusetts before October, 1780, and he also observed that the law passed in that State was decisive against the common law of England.

In quoting the laws of Massachusetts, which were passed in 1785 and afterwards, for naturalizing John Gardner and James Martin, he remarked that they clearly implied that even a natural-born subject who had not acted in the Revolution and an absentee was not entitled to citizenship. He likewise took notice of the case of Mr. William Smith, of South Carolina, against whose election as a Representative in Congress a petition was presented by Dr. Ramsey, although the decision of South Carolina on that subject was exactly the reverse of Massachusetts.

In speaking of the difficulties that occurred in explaining the terms citizen and alien he ran over a number of cases and asked whether if a person had arrived in the United States during the war, from Nova Scotia or elsewhere, and had taken an active part against the enemy, would he not be better entitled to the right of a citizen than even those who afterwards subscribed to the acts? The counsel for the prosecutors had admitted that a person who had been one of the mass of the people at the Declaration of Independence was a citizen. On the same principle, until a law passes to disprove that a man who was active in the Revolution previous to the treaty of peace was a citizen he must be one *ipso facto*.

Mr. Gallatin next read a quotation from the first volume of Woodison, page 382, an English writer who acknowledged that all persons were aliens at the recognition of independence, and that is a more liberal construction than the counsel for the petitioners would admit of, for by his construction our sailors, &c., ought to be naturalized, lest they be alarmed by the British.

The new Constitution of the United States requires certain qualifications for members of Congress, &c., but it does not deprive persons of their rights who were actually citizens before this Constitution was ratified that made the States the United States. They were united by consent before, and consequently he was one of the people before the United States existed.

He went on to read from the constitution of Massachusetts and several other States sundry clauses in support of his reasoning, and recapitulated the several heads of Mr. Lewis's arguments, to each of which he replied.

Mr. Gallatin said that Mr. Lewis was unfortunate in producing the law of Pennsylvania, for by proving too much he had proved nothing, for the forty-second section of the constitution is retrospective and by acknowledging the Articles of Confederation to be the supreme law of the land persons who were reciprocally citizens before are still left in full possession of the right.

So far from any dangerous consequences arising on my construction of citizenship, said he, I think it must be evident that there is more danger and absurdity in the counsel's own constructions. For in remarking on the policy of nations we find even slaves have been enfranchised by the great republics in times of common danger. The policy of America should be to make citizenship as easy as possible for the purpose of encouraging population; even during the British dominion that was a principle laid down, and afterwards it was attempted to be varied; it is made one of the principal subjects of complaint in the Declaration of Independence, where it is expressly said that the king endeavored to prevent the population of these States by having laws made to obstruct the naturalization of foreigners.

If there was any dangerous consequences to be apprehended from the former regulations on this subject they are all remedied by the new Constitution.

Therefore no ill consequence or absurdity can follow. The author of the Federalist supports this principle in Vol. II, page 54, for he says that it is a construction scarcely avoidable that citizens of each of the States are mutually so in all of them.

The first words in the Constitution, "We, the people," furnished another argument in support of Mr. Gallatin's principles, which he turned to great advantage, still drawing an inference to show that Mr. Lewis's construction of the subject was most liable to difficulties and to mischievous consequences.

He concluded by observing that if there was any disfranchising clauses in the Consti-

tution of the United States tending to deprive citizens of antecedent rights, all such clauses must be construed favorably, and were evidently on his side. With regard to a sentence that had been added by the advice of counsel to the affidavit of Pelatiah Webster, he made some remarks which tended to establish his own personal character, which he trusted would be found, when traced back to his nativity, to stand the test; and that his right to a seat in the Senate would also stand upon an equally just foundation.

Mr. Lewis denied ever having seen the affidavit of Mr. Webster until it was shown him at the time the examination before the committee was going forward.

Mr. Gallatin recriminated that the clause of which he took notice was not in the affidavit when Mr. Webster brought it to the committee, and that he had permitted it to be added with great reluctance. It was only the recital of a few words which passed between Mr. Gallatin and Mr. Webster in jest some years since, wherein Mr. Gallatin had ironically said his name was Sidney, probably alluding to some essays that had appeared in the newspapers under that signature which have been generally attributed to the pen of another gentleman in this State.

Mr. Jackson, in order to bring the merits of the subject directly before the Senate, said he would move a resolution that would have that effect; but upon Mr. Lewis's observing that he had not yet closed his arguments, and at the instance of Mr. Butler, from South Carolina, who said he would second Mr. Jackson's motion hereafter, it was withdrawn for the present.

Ordered, That the further consideration thereof be postponed until to-morrow.

SATURDAY, *February* 22, 1794.

The Senate resumed the consideration of the report of the committee on the petition of Conrad Laub and others, respecting the election of Mr. Gallatin to be a Senator of the United States.

The greater part of the day was taken up by Mr. Lewis's pleadings, wherein he entered into a very extensive field of reasoning, and quoted a great number of authorities in support of the principles on which he had set out last Thursday, and to prove that in the true sense of the Constitution of the United States, as well as of that of the State of Pennsylvania, Mr. Gallatin was not duly qualified for the office of a Senator, and therefore he trusted that the honorable Senate, upon mature reflection, would vacate his seat.

Mr. Gallatin closed his defense in a short speech, wherein he quoted Vattel, page 167, and explained the forty-second section of the constitution of Pennsylvania, the liberal construction of which, he said, was in his favor, and the construction contended for by the counsel absurd. He finished by reading a passage from Lord Bacon's works to show that where there is any doubt in the laws it should operate in favor of the defendant, and he accordingly made no doubt but that the Senate would validate his election.

Ordered, That the further consideration of the subject be postponed until Monday next.

A motion was made as follows:

"*Resolved*, That Albert Gallatin, returned to this House as a member for the State of Pennsylvania, is duly qualified for, and elected to, a seat in the Senate of the United States."

Ordered, That the consideration of this motion be postponed until Monday next, and that a number of copies of the fourth article of the First Confederation of United States be printed for the use of the Senate.

MONDAY, *February* 24, 1794.

The Senate resumed the consideration of the motion made the 22d instant, on the report of the committee on the petition of Conrad Laub and others, respecting the election of Mr. Gallatin to be a Senator of the United States; and,

After progress,

Ordered, That the further consideration thereof be postponed until to-morrow.

TUESDAY, *February* 25, 1794.

The Senate resumed the consideration of the motion made the 22d instant, on the report of the committee on the petition of Conrad Laub and others, respecting the election of Mr. Gallatin to be a Senator of the United States; and,

After progress,

Ordered, That the further consideration thereof be postponed until to-morrow.

WEDNESDAY, *February* 26, 1794.

The Senate resumed the consideration of the motion made the 22d instant, on the report of the committee on the petition of Conrad Laub and others, respecting the election of Mr. Gallatin to be a Senator of the United States; and,

After progress,

Ordered, That the further consideration thereof be postponed until to-morrow.

THURSDAY, *February* 27, 1794.

The Senate resumed the consideration of the motion, made the 22d instant, on the report of the committee on the petition of Conrad Laub and others, respecting the election of Mr. Gallatin to be a Senator of the United States; and,

After progress,

Ordered, That the further consideration thereof be postponed until to-morrow.

FRIDAY, *February* 28, 1794.

The Senate resumed the consideration of the 22d instant, on the report of the committee on the petition of Conrad Laub and others, respecting the election of Mr. Gallatin to be a Senator of the United States, and,

On the question to agree to the motion, as follows:

"*Resolved*, That Albert Gallatin, returned to this House as a member for the State of Pennsylvania, is duly qualified for, and elected to, a seat in the Senate of the United States,"

It passed in the negative—yeas 12, nays 14; as follows:

YEAS—Messrs. Bradley, Brown, Burr, Butler, Edwards, Gunn, Jackson, Langdon, Martin, Monroe, Robinson, and Taylor.

NAYS—Messrs. Bradford, Cabot, Ellsworth, Foster, Frelinghuysen, Hawkins, Izard, King, Livermore, Mitchell, Morris, Potts, Strong, and Vining.

On motion that it be

Resolved, That the election of Albert Gallatin to be a Senator of the United States was void, he not having been a citizen of the United States the term of years required as a qualification to be a Senator of the United States,

A motion was made to divide the question at the word "void;" and

On motion to agree to the first paragraph of the motion so divided, it passed in the affirmative—yeas 14, nays 12; as follows:

YEAS—Messrs. Bradford, Cabot, Ellsworth, Foster, Frelinghuysen, Hawkins, Izard, King, Livermore, Mitchell, Morris, Potts, Strong, and Vining.

NAYS—Messrs. Bradley, Brown, Burr, Butler, Edwards, Gunn, Jackson, Langdon, Martin, Monroe, Robinson, and Taylor.

On motion to adopt the resolution, as follows:

"*Resolved*, That the election of Albert Gallatin to be a Senator of the United States was void, he not having been a citizen of the United States the term of years required as a qualification to be a Senator of the United States,"

It passed in the affirmative—yeas 14, nays 12; as follows:

YEAS—Messrs. Bradford, Cabot, Ellsworth, Foster, Frelinghuysen, Hawkins, Izard, King, Livermore, Mitchell, Morris, Potts, Strong, and Vining.

NAYS—Messrs. Bradley, Brown, Burr, Butler, Edwards, Gunn, Jackson, Langdon, Martin, Monroe, Robinson, and Taylor.

Resolved, That an attested copy of the resolution of the Senate, declaring the election of Albert Gallatin to be void, be transmitted by the President of the Senate to the executive of the Commonwealth of Pennsylvania.

REPORT OF COMMITTEE ON ELECTIONS.

[This committee consisted of Messrs. Bradley, Ellsworth, Mitchell, Rutherford, Brown, Livermore, and Taylor.]

The report of the committee on the petition of Conrad Laub and others, above referred to, and made on the 10th instant, is as follows:

The Committee of Elections, to whom was referred the petition of Conrad Laub and others, against the election of the Hon. Albert Gallatin as a Senator of the United States for the State of Pennsylvania, report:

That they have had the same under consideration, and, having given due notice, as well the petitioners, by their agent, Michael Schmyser, as the said Mr. Gallatin appeared before them, and, on the part of the petitioners, the following evidence was produced, to wit:

Robert Morris, esq., being duly sworn, deposeth: "That during the war two of his sons went to Geneva for their education, and that at that place they became acquainted with some of the friends of Mr. Albert Gallatin, who had gone for America, and they being solicitous to hear of his safety, desired Mr. Morris's sons to write to their father to make inquiry and give the information he should obtain. That frequently afterwards he received letters for Mr. Gallatin from Europe, which he always supposed to come from the friends of Mr. Gallatin in Geneva. He supplied Mr. Gallatin with money for a bill upon London, and there supposed the funds to pay the same were remitted from Geneva. Mr. Morris paid Mr. Gallatin about one thousand guineas, by order of Messrs. ——— ——— & *Co., bankers* in Paris, believing always that they were reimbursed from Geneva. Mr.

Morris does not recollect dates, not having for a long while seen any of the letters that passed on the subject; he does not know the place of Mr. Gallatin's nativity, but from the general course of the circumstances which came under his observation he always did suppose he was born in Geneva.

"Sworn to and subscribed, January 22, 1794."

Nathaniel Cabot Higginson, esq., being duly sworn, deposeth: "That he does not know directly anything of Mr. Gallatin's being a foreigner or native; that he recollects knowing him by reputation and sight at Boston, in one of the years 1781, 1782, or 1783, and that he was generally reputed to be a foreigner. This deponent believes that Mr. Gallatin then taught the French language, and did not speak the English with facility; and further recollects that Mr. Gallatin was resident there or thereabouts a considerable time. This deponent further says that he never had any conversation with Mr. Gallatin, but founds his belief with respect to Mr. Gallatin's not speaking the English with facility on the information received from others.

"Sworn to and subscribed, January 22, 1794."

Mr. John Breakbill, being duly sworn, testifies: "That last winter, being a member of the legislature of Pennsylvania, previous to the election of Senator for the State of Pennsylvania, I heard Mr. Gallatin say his citizenship would not admit his being a Senator; what were his reasons for making the declaration I cannot say; I took it he did not wish to be elected. This declaration by Mr. Gallatin was made at a meeting of a number of members of the Pennsylvania legislature, held for the purpose of agreeing who should be set up as a candidate. The deponent further says he does not recollect Mr. Gallatin's assigning any other reason for his backwardness to serve as a Senator than the want of citizenship.

"Sworn to and subscribed, January 22, 1794."

Henry Kammerer, esq., being duly sworn, testifies: "That last winter, being a member of the legislature of Pennsylvania, and previous to the election of Senator for the said State, at a meeting of a number of the members of the State legislature to agree upon a candidate to fill said office, I heard Mr. Gallatin say when his name was proposed, 'As for my name, it is out of the question; I have not been a citizen long enough to entitle me to serve in that station.' That at a second meeting for the same purpose Mr. Gallatin was again proposed as a proper person for a candidate, and then the deponent understood (not from Mr. Gallatin, but from some of the members of assembly then present) that the doubt about his citizenship was then put to rights; and then it was almost unanimously agreed to put up Mr. Gallatin's name. That on the morning succeeding Mr. Gallatin's election the deponent heard it observed that notwithstanding Mr. Gallatin's election he could not take his seat, in consequence of his declaration that he had not been long enough a citizen. That he the same day mentioned this to Mr. Gallatin, who said that he had made this declaration under a mistaken idea that it was necessary for him to have been nine years a citizen of Pennsylvania, but that upon examining the Constitution he had found that to have been nine years a citizen of the United States was sufficient, and that he had been above nine years a citizen of the United States, or words to that effect.

"Sworn to and subscribed, January 22, 1794."

Pelatiah Webster, being duly qualified, testifies: "That eleven years ago last summer I let my house in Philadelphia to Mary Linn, who proposed to take lodgers; I reserved apartments for myself and boarded with her. Soon after Mr. Savery and Mr. Gallatin took lodgings of her and continued a number of months there. Mr. Savery spoke no English; Mr. Gallatin spoke good English and served as interpreter for him. They appeared to be well-bred gentlemen, and their conduct was agreeable and conciliating, and they soon gained the esteem and respect of the family. I do not know that they ever declared their country, but we all supposed they were French, and of course the people, customs, and country of France often made the topic of fireside chat. In one of these transient conversations Mr. Gallatin took occasion to say that his knowledge of French affairs was not very perfect, for he was not a native of France, nor had ever resided long in that country, but was from Geneva. No one interesting circumstance made any further inquiry necessary, nor do I recollect that he made any more explication of the subject.

"N. B. Mr. Gallatin once said that his original name was not Gallatin, but I think he said it was Sidney, but this conversation was in drollery, and not in earnest, as I conceived at the time of speaking from the manner and air of his speaking thereon.

"Sworn to and subscribed, January 28, 1794."

Mr. John Smilie, member of the House of Representatives of the United States, being sworn, saith: "That at a meeting of sundry members of the legislature of Pennsylvania, previous to Mr. Gallatin's election as a Senator of the United States, that gentleman was mentioned as a proper person to fill the said office; at which time Mr. Gallatin started

some doubt respecting his being qualified, but in what words the deponent does not recollect.

"That the deponent did not understand upon what the doubt was founded, though he thinks from something said by Mr. Gallatin that it related to Mr. Gallatin's citizenship, for, as the deponent conceived, the conversation proceeded from that kind of modesty which gentlemen usually feel upon having their names proposed upon such occasions, he did not pay much attention to it, and that his reason for forming this opinion was his having frequently observed gentlemen to make excuses in similar situations, and from his knowledge of Mr. Gallatin's modesty of disposition. When being asked whether he ever heard Mr. Gallatin say that he had not been a citizen of the United States nine years previous to his election, the deponent replies he never did. Upon being asked by Mr. Lewis, counsel for the petitioners, what he had ever heard Mr. Gallatin say touching his citizenship, the deponent replies that a considerable time subsequent to Mr. Gallatin's election Mr. Gallatin, in conversations with the deponent, expressed an opinion that he was qualified with respect to citizenship. What else did you ever hear Mr. Gallatin say with respect to his citizenship? The deponent answers that he recollects having heard him say something with respect to the laws of Massachusetts not requiring an oath of allegiance at the time of his giving his opinion as aforesaid. Did you ever hear Mr. Gallatin say he was born in Europe? The deponent replies that he does not recollect Mr. Gallatin's saying that he was born in Europe, but that he has heard Mr. Gallatin speak of himself as a Genevan, mention his family in Geneva, and in conversations with him hath always understood him to be of Geneva. Did you ever hear Mr. Gallatin mention the time of his coming into America? He replies that he thinks Mr. Gallatin, about a year past, mentions that he had been then thirteen years in this country, and that he was nineteen years old when he came. Did you ever hear Mr. Gallatin say when or where he took the oath of allegiance? He replies he heard Mr. Gallatin say that he took the oath of allegiance in Virginia, but as to the time the deponent cannot be precise, but he thinks, if he can recollect, that Mr. Gallatin did mention to him, though he cannot be certain; but it was not nine years before he was elected. That the deponent thinks Mr. Gallatin's doubts respecting his citizenship were founded on this ground, the witness referring in this part of his testimony to the meeting before mentioned, when these doubts were expressed; but he cannot specify the time of Mr. Gallatin's having mentioned to him the circumstance of his having taken the oath of allegiance.

"Sworn to and subscribed, January 28, 1794."

Mr. Thomas Stokely, being sworn, deposeth and saith: "That some few days before a Senator was chosen for the State of Pennsylvania a meeting was had to fix on a proper person to represent the State in that office; sundry persons were started as candidates, among whom was Mr. Gallatin, who, upon his being named, observed that there were many other persons more proper to fill that office; and also observed that there might be doubts as to his citizenship, though the deponent, from the length of time, and not expecting to have been called upon, retains too slight an impression of what then passed to be able to recollect the words with precision. That at a subsequent meeting for the same purpose Mr. Gallatin was finally agreed to be nominated, and the deponent heard no objection stated thereto, either by Mr. Gallatin (who was present) or any other person.

"Sworn to and subscribed, February 1, 1794."

The before-recited evidence being introduced and closed on the part of the petitioners, Mr. Gallatin was asked whether he had any testimony to produce on his part, to which he gave the following answer in writing, to wit:

"The committee to whom the petition of Conrad Laub, &c., was referred, having informed me that the petitioners had closed their evidence, and asked me 'whether I had any testimony to produce on my side,' I answer that it appears to me that there is not sufficient matter charged in the petition and proved by the testimony to vacate my seat; that by the resolution appointing the committee the petition is referred to them to state the facts, 'without prejudice as to any questions which may, upon the hearing, be raised by the sitting member as to the sufficiency of the parties and the matter charged in the petition;' that upon the hearing, and in the present stage of the same, the question as to the sufficiency of matter, as above stated, is raised by me; that I conceive from the evident construction of the resolution I have a right to have that question decided by the Senate; that until the same shall have been decided I do not wish to be at the trouble and expense of collecting evidence at a great distance; and therefore that at present I do not mean to produce any testimony, reserving, however, to myself the right which I conceive I have to produce any testimony in my favor after the said question shall have been decided by the Senate, in case it is decided against me.

"ALBERT GALLATIN."

Which being duly read and considered, the committee came to the following resolution, to wit:

"Whereas the evidence on the part of the petitioners having been closed, and it appearing that Mr. Gallatin was an alien in the year 1780, and his answer in writing as-

signing reasons why he should not adduce evidence on his part in the present stage of the inquiry not being, in the opinion of the committee, sufficient,

"*Resolved*, That in the opinion of the committee it is now incumbent on Mr. Gallatin to show that he has become a citizen of the United States, and when."

Which resolution being read to Mr. Gallatin, he informed the committee he should rely on the answer he had before given.

All which is respectfully submitted to the honorable Senate by the committee.

And subjoined is the statement of facts exhibited by Mr. Gallatin and agreed to between him and the counsel for the petitioners, as mentioned the 20th instant:

"Albert Gallatin was born at Geneva on the 29th day of January, 1761. He left that place for the United States in April or May, 1780; arrived in Boston, Mass., on the 14th or 15th of July of the same year, and has ever since resided within the United States. In October, 1780, he removed from Boston to Machias, in the Province of Maine, in which place and its neighborhood he resided one year, and commenced a settlement on a tract of vacant land. During that time he furnished out of his own funds supplies amounting in value to more than sixty pounds Massachusetts currency to Col. John Allen, who was the commanding officer stationed there, and also superintendent of Indian affairs for the Eastern department, for the use of the American troops, and on several occasions acted as a volunteer under the same officer's command. For the said supplies he received one year after a warrant on the treasury of the State of Massachusetts, which he sold at a considerable depreciation. In October, 1781, he returned to Boston, and in the spring of 1782 was, by a vote of the corporation of the University of Cambridge, otherwise called Harvard College, chosen instructor of the French language of the said university. By the same vote he was allowed a room in the college, the privilege of the commons at the tutor's table, the use of the library, and also the right of having his pay, which depended on the voluntary subscription and attendance of the students, collected by the steward of the institution, together with the other charges against the students for board and education. Those terms he accepted and remained in that station for the term of one year. In July, 1783, he removed to Pennsylvania, and in November of the same year proceeded to Virginia, in which State he had purchased more than one thousand acres of land, and amounting to more than one hundred pounds Virginia currency in value, some time between July and November, 1783. Between this last-mentioned period and the month of October, 1785, he purchased other lands in the said State to a very large amount, and in the said last-mentioned month he took an oath of allegiance to the said State. In December, 1785, he purchased the plantation in Fayette County, in Pennsylvania, on which he has lived ever since. In October, 1789, he was elected member of the convention to amend the constitution of Pennsylvania, and in October, 1790, 1791, and 1792, he was elected member of the legislature of the same State. On the 28th of February, 1793, he was chosen Senator to represent the said State in the Senate of the United States, and took his seat in December following."

[Fourth Congress—First session.]

HUMPHREY MARSHALL,

Senator from Kentucky from March 4, 1795, *to March* 4, 1801.

In February, 1796, the Vice-President laid before the Senate a letter from the governor of Kentucky and a memorial from the Representatives of said State, which memorial stated that in February, 1795, a pamphlet was published by George Muter and Benjamin Sebastian (two judges of the court of appeals), in which they said that Humphrey Marshall had had a suit in chancery in said court of appeals, in which, it appearing manifest from the records and documents that he had committed a gross fraud, the court had given a deeree against him; and that in the course of the investigation he had been publicly charged with perjury. The memorial further stated that the said representatives did not mean to give an opinion on the justice of the said charge, but requested that an investigation relative thereto might take place. Mr. Marshall was also solicitous that an investigation of the subject should take place in the Senate. It was determined that the memorial could not be sustained; also that as the Constitution does not give jurisdiction to the Senate the consent of the party cannot give it, and that therefore the said memorial ought to be dismissed.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Annals of Congress, 4th Cong., 1st sess., 1795-'96, within pages 47-59.

FRIDAY, *February* 26, 1796.

The Vice-President laid before the Senate a letter from the governor of the State of Kentucky, with divers papers accompanying the same.

The letter and papers therein referred to were read, and ordered to lie on the table.

MONDAY, *February* 29, 1796.

On motion by Mr. Marshall,

"That the letter from the governor of the State of Kentucky, with divers papers accompanying the same, communicated to the Senate on the 26th instant, be referred to a committee."

It was agreed to postpone the consideration of the motion until to-morrow.

WEDNESDAY, *March* 2, 1796.

The Senate resumed the consideration of the motion made on the 29th of February respecting the letter and papers from the governor of the State of Kentucky; and

Ordered, That they be referred to Messrs. Livermore, Ross, King, Rutherfurd, and Strong to consider and report thereon to the Senate.

FRIDAY, *March* 11, 1796.

Mr. Livermore reported from the committee to whom was referred the letter of the governor and the memorial of the representatives of the State of Kentucky, with the papers accompanying them; and the report was read, and ordered to lie on the table.

TUESDAY, *March* 15, 1796.

The Senate resumed the consideration of the report of the committee to whom was referred the letter of the governor and the memorial of the representatives of the State of Kentucky, with the papers accompanying them; and,

After debate, the Senate adjourned.

WEDNESDAY, *March* 16, 1796.

Ordered, That the consideration of the report of the committee to whom was referred the letter of the governor and the memorial of the representatives of the State of Kentucky, with the papers accompanying them, be further postponed.

THURSDAY, *March* 17, 1796.

The Senate resumed the consideration of the report of the committee to whom was referred the letter from the governor and the memorial of the Representatives of the State of Kentucky, with the papers accompanying them, which is as follows:

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Livermore, Ross, King, Rutherford, and Strong.]

That the representatives of the freemen of Kentucky state in their memorial that in February, 1795, a pamphlet was published by George Muter and Benjamin Sebastian (who were two judges of the court of appeals), in which they say that Humphrey Marshall had a suit in chancery in the said court of appeals, in which it appearing manifest

from the oath of the complainant, from disinterested testimony, from records, from documents furnished by himself, and from the contradictions contained in his own answer, that he had committed a gross fraud, the court gave a decree against him, and that in the course of the investigation he was judicially charged with perjury. That Mr. Marshall, in a publication in the Kentucky Gazette, called for a specification of the charge, to which the said George Muter and Benjamin Sebastian, in a joint publication, replied that he was guilty of perjury in his answer to the bill in chancery exhibited against him by James Wilkinson, and that they would lend jurisdiction to any suit brought against them therefor. That no such suits as the said representatives could learn, had been brought. The said representatives further say that they do not mean to give an opinion on the justice of the said charge, but request that an investigation may immediately take place relative thereto.

Your committee observe that the said suit was tried eighteen months before Mr. Marshall was chosen a member of the Senate, and that previous to his election mutual accusations had taken place between him and the judges of the said court relating to the same suit.

The representatives of Kentucky have not furnished any copy of Mr. Marshall's answer on oath, nor have they stated any part of the testimony, or produced any of the said records or documents, or the copy of any paper in the cause, nor have they intimated a design to bring forward those or any other proofs.

Your committee are informed by the other Senator and two Representatives in Congress from Kentucky that they have not been requested by the legislature of that State to prosecute this inquiry, and that they are not possessed of any evidence in the case, and that they believe no person is authorized to appear in behalf of the legislature.

Mr. Marshall is solicitous that a full investigation of the subject should take place in the Senate, and urges the principle that consent takes away error, as applying on this occasion, to give the Senate jurisdiction; but as no person appears to prosecute, and there is no evidence adduced to the Senate, nor even a specific charge, the committee think any further inquiry by the Senate would be improper. If there were no objections of this sort, the committee would still be of opinion that the memorial could not be sustained. They think that in a case of this kind no person can be held to answer for an infamous crime unless on a presentment or indictment of a grand jury, and that in all such prosecutions the accused ought to be tried by an impartial jury of the State and district wherein the crime shall have been committed. If, in the present case, the party has been guilty in the manner suggested, no reason has been alleged by the memorialists why he has not long since been tried in the State and district where he committed the offense. Until he is legally convicted, the principles of the Constitution and of the common law concur in presuming that he is innocent. And the committee are compelled, by a sense of justice, to declare that in their opinion this presumption in favor of Mr. Marshall is not diminished by the reminiating publications of two men, who take no pains to conceal their personal resentment against him.

Whatever motives induced the legislature of Kentucky to call the attention of the Senate to the above-mentioned publications, the committee are of opinion that as the Constitution does not give jurisdiction to the Senate the consent of the party cannot give it, and that therefore the said memorial ought to be dismissed.

On motion to postpone the consideration of the report until to-morrow, it passed in the negative; and,

After debate, on motion to reconsider the question for postponement, it passed in the negative.

On motion to expunge all the words from "if in the present case," inclusive, to the end of the report, a motion was made to amend the part proposed to be struck out by expunging these words: "of two men who take no pains to conceal their personal resentment," and it was agreed that this motion was not in order.

A motion was made to divide the original motion for striking out, and retain the words from "if in the present case," inclusive, to the word, "innocent," at the end of the first paragraph; and,

After debate, the Senate adjourned.

FRIDAY, *March* 18, 1796.

The Senate resumed the consideration of the report of the committee to whom was referred the letter from the governor and the memorial of the representatives of the State of Kentucky, with the papers accompanying them, together with the motion made thereon, and under debate yesterday; and a motion was made to amend the motion by expunging from the report all that follows the words, "the memorial could not be sustained;" and,

After debate, the Senate adjourned.

SATURDAY, *March* 19, 1796.

The Senate resumed the *consideration of* the report of the committee to whom was

referred the letter from the governor and the memorial of the representatives of the State of Kentucky, with the papers accompanying them; also the motion made thereon and under debate yesterday, together with the motion for amendment by expunging from the report all that follows the words, "the memorial could not be sustained;" and a motion was made to postpone the report and the motions made thereon, and to take into consideration the following resolution:

"Whereas the honorable the legislature of the State of Kentucky have, by their memorial transmitted by the governor of said State, informed the Senate that Humphrey Marshall, a Senator from the said State, had been publicly charged with the crime of perjury, and requested that an inquiry might be thereupon instituted, in which request the said Humphrey Marshall has united; and it being highly interesting, as well to the honor of the said State as to that of the Senate, and an act of justice due to the character of the said Humphrey Marshall that such inquiry should be had: Therefore,

"*Resolved*, That the Senate will proceed to the examination of the said charge on the —— day of the next session of Congress; that in the opinion of the Senate a conviction or acquittal in the ordinary courts of justice of the said State would be the most satisfactory evidence on this occasion; but that if this should not be attainable by reason of any act of limitation or other legal impediment, such other evidence will be received as the nature of the case may admit and require.

"*Resolved*, That the Vice-President be requested to transmit a copy of the foregoing resolution to the governor of the said State."

After debate, the Senate adjourned.

MONDAY, *March* 21, 1796.

The Senate resumed the consideration of the motion, made on the 19th instant, to postpone the report of the committee to whom was referred the letter from the governor and the memorial of the representatives of the State of Kentucky, with the papers accompanying them, together with the motions of amendment made thereon, in order to consider the following resolution:

"Whereas the honorable legislature of the State of Kentucky have, by their memorial, transmitted by the governor of the said State, informed the Senate that Humphrey Marshall, a Senator from the said State, had been publicly charged with the crime of perjury, and requested that an inquiry might be thereupon instituted, in which request the said Humphrey Marshall has united; and it being highly interesting, as well to the honor of the said State as to that of the Senate, and an act of justice due to the character of the said Humphrey Marshall that such inquiry should be had: Therefore,

"*Resolved*, That the Senate will proceed to the examination of the said charge on the —— day of the next session of Congress; that, in the opinion of the Senate, a conviction or acquittal in the ordinary courts of justice of the said State would be the most satisfactory evidence on this occasion; but that, if this should not be attainable, by reason of any act of limitation or other legal impediment, such other evidence will be received as the nature of the case may admit and require.

"*Resolved*, That the Vice-President be requested to transmit a copy of the foregoing resolution to the governor of the said State."

And on the question for postponement, it passed in the negative—yeas 7, nays 17; as follows:

YEAS—Messrs. Bloodworth, Brown, Burr, Langdon, Mason, Robinson, and Tazewell.

NAYS—Messrs. Bingham, Bradford, Cabot, Foster, Frelinghuysen, Gunn, Henry, Latimer, Livermore, Martin, Paine, Read, Ross, Rutherfurd, Strong, Trumbull, and Vining.

TUESDAY, *March* 22, 1796.

The Senate resumed the consideration of the report of the committee to whom was referred the letter from the governor and the memorial of the representatives of the State of Kentucky, with the papers accompanying them.

On the question to expunge these words: "if there were no objections of this sort, the committee would still be of opinion that the memorial could not be sustained," it passed in the negative.

On the question to expunge the following words:

"They think that in a case of this kind no person can be held to answer for an infamous crime unless on a presentment or indictment of a grand jury, and that in all such prosecutions the accused ought to be tried by an impartial jury of the State and district wherein the crime shall have been committed. If in the present case the party has been guilty in the manner suggested, no reason has been alleged why he has not long since been tried in the State and district where he committed the offense. Until he is legally convicted, the principles of the Constitution and of the common law concur in presuming that he is innocent"—

It passed in the negative.

On motion, it was agreed to amend the next paragraph to read as follows:

"*And the committee* are compelled by a sense of justice to declare that in their opin-

ion this presumption in favor of Mr. Marshall is not diminished by recriminating publications, which manifest strong resentment against him."

And on the question to expunge the paragraph as amended, it passed in the negative.

On motion, it was agreed to amend the last clause of the report to read as follows:

"And they are also of opinion that as the Constitution does not give jurisdiction to the Senate the consent of the party cannot give it; and that therefore the said memorial ought to be dismissed."

On motion to expunge the clause last agreed to be amended, it passed in the negative—yeas 7, nays 16; as follows:

YEAS—Messrs. Bloodworth, Burr, Langdon, Martin, Mason, Robinson, and Tazewell.

NAYS—Messrs. Bingham, Bradford, Cabot, Foster, Frelinghuysen, Gunn, Henry, Latimer, Livermore, Paine, Read, Ross, Rutherfurd, Strong, Trumbull, and Vining.

Mr. Brown requested and was excused from voting on the question.

On motion, it was agreed to amend the last paragraph but two of the report, beginning with the words "if in the present case," by inserting the words "by the memorialists" after the word "alleged."

On the question to adopt the report as amended, it passed in the affirmative—yeas 16, nays 8; as follows:

YEAS—Messrs. Bingham, Bradford, Cabot, Foster, Frelinghuysen, Gunn, Henry, Latimer, Livermore, Paine, Read, Ross, Rutherfurd, Strong, Trumbull, and Vining.

NAYS—Messrs. Bloodworth, Brown, Burr, Langdon, Martin, Mason, Robinson, and Tazewell.

So the report was adopted, as follows:

REPORT AS ADOPTED.

The committee to whom was referred the letter of the governor and the memorial of the representatives of Kentucky, with the papers accompanying them, report:

That the representatives of the freemen of Kentucky state in their memorial that in February, 1795, a pamphlet was published by George Muter and Benjamin Sebastian (who were two judges of the court of appeals), in which they say that Humphrey Marshall had a suit in chancery in the said court of appeals, in which it appearing manifest from the oath of the complainant, from disinterested testimony, from records, from documents furnished by himself, and from the contradictions contained in his own answer, that he had committed a gross fraud, the court gave a decree against him; and that in the course of the investigation he was publicly charged with perjury. That Mr. Marshall, in a publication in the Kentucky Gazette, called for a specification of the charge; to which the said George Muter and Benjamin Sebastian, in a like publication, replied that he was guilty of perjury in his answer to the bill in chancery exhibited against him by James Wilkinson, and that they would plead justification to any suit brought against them therefor That no such suit, as the said representatives could learn, had been brought. The said representatives further say that they do not mean to give an opinion on the justice of the said charge, but request that an investigation may immediately take place relative thereto.

Your committee observe that the said suit was tried eighteen months before Mr. Marshall was chosen a member of the Senate, and that previous to his election mutual accusations had taken place between him and the judges of the said court relating to the same suit.

The representatives of Kentucky have not furnished any copy of Mr. Marshall's answer on oath, nor have they stated any part of the testimony, or produced any of the said records or documents, or the copy of any paper in the cause, nor have they intimated a design to bring forward those or any other proofs.

Your committee are informed by the other Senator and the two Representatives in Congress from Kentucky that they have not been requested by the legislature of that State to prosecute this inquiry, and that they are not possessed of any evidence in the case, and that they believe no person is authorized to appear on behalf of the legislature.

Mr. Marshall is solicitous that a full investigation of the subject shall take place in the Senate, and urges the principle that consent takes away error, as applying, on this occasion, to give the Senate jurisdiction; but, as no person appears to prosecute, and there is no evidence adduced to the Senate, nor even a specific charge, the committee think any further inquiry by the Senate would be improper. If there were no objections of this sort, the committee would still be of opinion that the memorial could not be sustained. They think that in a case of this kind no person can be held to answer for an infamous crime unless on a presentment or indictment of a grand jury, and that in all such prosecutions the accused ought to be tried by an impartial jury of the State and district wherein the crime shall have been committed. If, in the present case, the party has been guilty in the manner suggested, no reason has been alleged by the memorialists why he has not long since been tried in the State and district where he com-

mitted the offense. Until he is legally convicted, the principles of the Constitution and of the common law concur in presuming that he is innocent. And the committee are compelled, by a sense of justice, to declare that in their opinion the presumption in favor of Mr. Marshall is not diminished by the recriminating publications, which manifest strong resentment against him.

And they are also of opinion that as the Constitution does not give jurisdiction to the Senate the consent of the party cannot give it; and that therefore the said memorial ought to be dismissed.

Resolved, That the Vice-President of the United States be requested to transmit a copy of the foregoing report to the governor of Kentucky.

[Fourth Congress—First session.]

WILLIAM BLOUNT AND WILLIAM COCKE,

of Tennessee.

The history of the case as here given consists of a transcript of the proceedings of the Senate relating to it from the Annals of Congress, 4th Cong., 1st sess., vol. 1, 1795–'96, and found within pages 83–122. The case simply shows that Messrs. Blount and Cocke were not admitted to seats in the Senate on papers presented to the Senate May 9, 1796, and purporting to be credentials of being duly elected Senators from the State of Tennessee. It does not show why they were not admitted. There is, however, an allusion to a pending "bill proposing to admit the Southwestern Territory into the Union," which bill was not approved until June 1, 1796. From this it may be inferred that Messrs. Blount and Cocke were not admitted to their seats because the papers purporting to be their credentials of election were of earlier date than that of the admission of Tennessee into the Union. Mr. Blount and Mr. Cocke were again elected August 2, 1796, by the legislature of Tennessee, after its admission as a State, and took their seats in the Senate December 6, 1796.

MONDAY, *May* 9, 1796.

On motion that a paper purporting to be the appointment of William Blount and William Cocke, respectively, to seats in the Senate, should be read, it was agreed that the motion be postponed till to-morrow.

TUESDAY, *May* 10, 1796.

Ordered, That the consideration of the paper, purporting to be the appointment of William Blount and William Cocke to a seat in the Senate, respectively, be postponed until Friday next.

SATURDAY, *May* 21, 1796.

A letter, signed William Cocke, purporting that he is appointed a Senator for the State of Tennessee, and claiming a seat in the Senate, was presented and read.

Ordered, That it lie on the table.

MONDAY, *May* 23, 1796.

A letter, signed William Blount and William Cocke, was read, stating that they have been duly and legally elected Senators to represent the State of Tennessee in the Senate.

On motion,

"That Mr. Blount and Mr. Cocke, who claim to be Senators of the United States, be received as spectators, and that chairs be provided for that purpose until the final decision of the Senate shall be given on the bill proposing to admit the Southwestern Territory into the Union,"

A motion was made to refer the consideration thereof to a committee; and it passed in the negative.

On motion to agree to the original motion, it passed in the affirmative—yeas 12, nays 11; as follows:

YEAS—Messrs. Bloodworth, Brown, Burr, Butler, Foster, Henry, Langdon, Martin, Potts, Robinson, Tattnall, and Tazewell.

NAYS—Messrs. Bingham, Bradford, Gunn, Latimer, Livermore, Marshall, Read, Ross, Rutherfurd, Strong, and Trumbull.

WEDNESDAY, *June* 1, 1796.

On motion by Mr. Martin that it be

"*Resolved*, That the Hon. William Blount and William Cocke, esquires, who have produced credentials of being duly elected Senators for the State of Tennessee, be admitted to take the oath necessary for their qualification, and their seats accordingly,"

Ordered, That a paper, purporting to be the credentials of Mr. Blount and Mr. Cocke, be read.

And, on the question to agree to the resolution, it passed in the negative—yeas 10, nays 11; as follows:

YEAS—Messrs. Bloodworth, Brown, Burr, Butler, Gunn, Langdon, Martin, Robinson, Tattnall, and Tazewell.

NAYS—Messrs. Bingham, Bradford, Foster, Latimer, Livermore, Marshall, Potts, Read, Ross, Rutherfurd, and Trumbull.

[Fifth Congress—First session.]

WILLIAM BLOUNT,

Senator from Tennessee from December 6, 1796, *to July* 8, 1797.

Mr. Blount was expelled from the Senate on July 8, 1797, as "having been guilty of a high misdemeanor." An account of his impeachment, which was a proceeding distinct from the expulsion case here given, is found in the Annals of Congress, 5th Cong., 1st and 2d sess., vol. 1, 1797–'98, within pages 39 to 45, and Annals of Congress, 2d and 3d sess., vol. 2, 1798–'99, pages 2245 to 2416. The decision in the impeachment trial was that "the court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed," the grounds on which the decision rested not being given.

The account of the expulsion case here given consists of a transcript of the proceedings of the Senate relating to it from the Annals of Congress, 5th Cong., 1st and 2d sess., vol. 1, 1797–'98, within pages 33 to 45.

MONDAY, *July* 3, 1797.

The following message was received from the President of the United States:

Gentlemen of the Senate and House of Representatives:

The whole of the intelligence which has for some time past been received from abroad, the correspondence between this Government and the ministers of the belligerent powers residing here, and the advices from the officers of the United States, civil and military, upon the frontiers, all conspire to show, in a very strong light, the critical situation of our country. That Congress might be enabled to form a more perfect judgment of it, and of the measures necessary to be taken, I have directed the proper officers to prepare such collections of extracts from the public correspondence as might afford the clearest information. The reports made to me, from the Secretary of State and the Secretary of War, with a collection of documents from each of them, are now communicated to both Houses of Congress. I have desired that the message, reports, and documents may be considered as confidential, merely that the members of both Houses of Congress may be apprised of their contents before they should be made public. As soon as the two Houses shall have heard them, I shall submit to their discretion the publication of the whole or any such parts of them as they shall judge necessary or expedient for the public good.

JOHN ADAMS.

UNITED STATES, *July* 3, 1797.

The message and papers were read.

On motion, the copy of a letter communicated with the message was again read, in the hearing of Mr. Blount, who was absent when it was read the first time; and who, on being requested to declare whether he was the author of this letter or not, observed that he wrote a letter to Cary, but was unable to say whether the copy was a correct one or not without recurrence to his papers; and desired that he might have until to-morrow to reply.

TUESDAY, *July* 4, 1797.

Mr. Cocke laid before the Senate a letter addressed to him, signed William Blount, purporting that it was necessary for him, the said William Blount, to have further time for recurrence to his papers and other evidence to remove suspicion.

Resolved, That so much of the message from the President of the United States, of the 3d instant, and the papers accompanying the same, as relates to a letter purporting to have been written by William Blount, a Senator from the State of Tennessee, be referred to a select committee, to consider and report what, in their opinion, it is proper for the Senate to do thereon; and that the said committee have power to send for persons, papers, and records relating to the subject committed to them, and that Messrs. Ross, Stockton, Henry, Sedgwick, and Read be the committee.

Ordered, That the Senate be, for the present, under an injunction of secrecy on the papers referred to in the above-mentioned message.

WEDNESDAY, *July* 5, 1797.

Mr. Ross, from the committee on part of the message of the President of the United States, of the 3d instant, made report; and the report was read.

Ordered, That the Vice-President notify William Blount, Senator from the State of Tennessee, by letter, to attend the Senate.

The Vice-President accordingly addressed to him the following letter, by the Doorkeeper:

SENATE CHAMBER, *July* 5, 1797.

SIR: You are hereby required to attend the Senate, in your place, without delay.
By order of the Senate.

TH. JEFFERSON,
President of the Senate.

WILLIAM BLOUNT, Esq.,
Senator from the State of Tennessee.

On motion that it be

Resolved, That the letter said to have been written by William Blount, together with the several notes that passed between the Secretary of State and the British minister relative to the said letter, be printed for the use of the members—

It was agreed that the consideration of this motion be postponed until to-morrow.

Ordered, That the injunction of secrecy respecting the message of the President of the United States of the 3d instant, and the papers accompanying the same, be taken off.

The Vice-President acquainted the Senate that the Doorkeeper had returned his letter addressed agreeably to their order to William Blount, as on inquiry he could not be found.

THURSDAY, *July* 6, 1797.

Mr. Ross, from the committee to whom was referred that part of the President's message of the 3d instant which relates to a letter purporting to have been written by William Blount, esq., together with the papers accompanying the same, made a further report; which was read. Upon which,

Mr. Blount read in his place a declaration, purporting that he should attend in his seat, from time to time, to answer to any allegations that might be brought against him.

Ordered, That the consideration of the report of the committee be postponed until 11 o'clock to-morrow morning.

On motion by Mr. Blount that he be heard by counsel on the subject-matter of this report,

A motion was made to postpone the consideration of this motion until to-morrow, and it passed in the negative.

Resolved, That Mr. Blount be heard by counsel, not exceeding two, to-morrow morning at 11 o'clock.

Ordered, That the Secretary furnish Mr. Blount with attested copies of such papers as he may point out, respecting the subject this day reported on by the committee.

FRIDAY, *July* 7, 1797.

Resolved, That the instructions to the committee to whom was referred that part of the President's message of the 3d instant which relates to a letter purporting to have been written by William Blount, esq., together with the papers accompanying the same, be amended by adding, after the word "records," the following words: "and particularly the papers of William Blount, esq."

Agreeably to the order of the day, the Senate proceeded to the consideration of the report of the above-mentioned committee, made yesterday.

On motion that such printers as may request it be accommodated with stands on the floor of the Senate, to enable them to take notes of their proceedings on the present occasion, it passed in the negative.

Mr. Blount notified the Senate that Jared Ingersoll and Alexander J. Dallas are the counsel he has employed, agreeably to the vote of the Senate passed yesterday.

The President requested Mr. Blount to declare whether or not he was the author of a letter a copy of which was communicated with the message of the President of the United States of the 3d instant.

Mr. Blount declined to answer.

On motion, in consequence of the request of the counsel above mentioned that they have until Monday next to prepare themselves to show cause why the report of the committee should not be adopted, after debate it was agreed that the question before the Senate be postponed for the purpose of receiving a special message from the House of Representatives.

SATURDAY, *July* 8, 1797.

The Senate resumed the consideration of the report of the committee to whom was referred that part of the President's message which relates to a letter purporting to have been written by William Blount, esq., together with the papers accompanying the same.

On motion, Mr. Justice Smith was desired to attend and administer the oath to such witnesses as might be adduced.

On motion, Mr. Martin and Mr. Cocke, of the Senate, being sworn, severally testified,

[Fifth Congress—First session.]

WILLIAM BLOUNT,

Senator from Tennessee from December 6, 1796, *to July* 8, 1797.

Mr. Blount was expelled from the Senate on July 8, 1797, as "having been guilty of a high misdemeanor." An account of his impeachment, which was a proceeding distinct from the expulsion case here given, is found in the Annals of Congress, 5th Cong., 1st and 2d sess., vol. 1, 1797–'98, within pages 39 to 45, and Annals of Congress, 2d and 3d sess., vol. 2, 1798–'99, pages 2245 to 2416. The decision in the impeachment trial was that "the court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed," the grounds on which the decision rested not being given.

The account of the expulsion case here given consists of a transcript of the proceedings of the Senate relating to it from the Annals of Congress, 5th Cong., 1st and 2d sess., vol. 1, 1797–'98, within pages 33 to 45.

MONDAY, *July* 3, 1797.

The following message was received from the President of the United States:

Gentlemen of the Senate and House of Representatives:

The whole of the intelligence which has for some time past been received from abroad, the correspondence between this Government and the ministers of the belligerent powers residing here, and the advices from the officers of the United States, civil and military, upon the frontiers, all conspire to show, in a very strong light, the critical situation of our country. That Congress might be enabled to form a more perfect judgment of it, and of the measures necessary to be taken, I have directed the proper officers to prepare such collections of extracts from the public correspondence as might afford the clearest information. The reports made to me, from the Secretary of State and the Secretary of War, with a collection of documents from each of them, are now communicated to both Houses of Congress. I have desired that the message, reports, and documents may be considered as confidential, merely that the members of both Houses of Congress may be apprised of their contents before they should be made public. As soon as the two Houses shall have heard them, I shall submit to their discretion the publication of the whole or any such parts of them as they shall judge necessary or expedient for the public good.

JOHN ADAMS.

UNITED STATES, *July* 3, 1797.

The message and papers were read.

On motion, the copy of a letter communicated with the message was again read, in the hearing of Mr. Blount, who was absent when it was read the first time; and who, on being requested to declare whether he was the author of this letter or not, observed that he wrote a letter to Cary, but was unable to say whether the copy was a correct one or not without recurrence to his papers; and desired that he might have until to-morrow to reply.

TUESDAY, *July* 4, 1797.

Mr. Cocke laid before the Senate a letter addressed to him, signed William Blount, purporting that it was necessary for him, the said William Blount, to have further time for recurrence to his papers and other evidence to remove suspicion.

Resolved, That so much of the message from the President of the United States, of the 3d instant, and the papers accompanying the same, as relates to a letter purporting to have been written by William Blount, a Senator from the State of Tennessee, be referred to a select committee, to consider and report what, in their opinion, it is proper for the Senate to do thereon; and that the said committee have power to send for persons, papers, and records relating to the subject committed to them, and that Messrs. Ross, Stockton, Henry, Sedgwick, and Read be the committee.

Ordered, That the Senate be, for the present, under an injunction of secrecy on the papers referred to in the above-mentioned message.

WEDNESDAY, *July* 5, 1797.

Mr. Ross, from the committee on part of the message of the President of the United States, of the 3d instant, made report; and the report was read.

Ordered, That the Vice-President notify William Blount, Senator from the State of Tennessee, by letter, to attend the Senate.

The Vice-President accordingly addressed to him the following letter, by the Doorkeeper:

SENATE CHAMBER, *July* 5, 1797.

SIR: You are hereby required to attend the Senate, in your place, without delay.
By order of the Senate.

TH. JEFFERSON,
President of the Senate.

WILLIAM BLOUNT, Esq.,
Senator from the State of Tennessee.

On motion that it be

Resolved, That the letter said to have been written by William Blount, together with the several notes that passed between the Secretary of State and the British minister relative to the said letter, be printed for the use of the members—

It was agreed that the consideration of this motion be postponed until to-morrow.

Ordered, That the injunction of secrecy respecting the message of the President of the United States of the 3d instant, and the papers accompanying the same, be taken off.

The Vice-President acquainted the Senate that the Doorkeeper had returned his letter addressed agreeably to their order to William Blount, as on inquiry he could not be found.

THURSDAY, *July* 6, 1797.

Mr. Ross, from the committee to whom was referred that part of the President's message of the 3d instant which relates to a letter purporting to have been written by William Blount, esq., together with the papers accompanying the same, made a further report; which was read. Upon which,

Mr. Blount read in his place a declaration, purporting that he should attend in his seat, from time to time, to answer to any allegations that might be brought against him.

Ordered, That the consideration of the report of the committee be postponed until 11 o'clock to-morrow morning.

On motion by Mr. Blount that he be heard by counsel on the subject-matter of this report,

A motion was made to postpone the consideration of this motion until to-morrow, and it passed in the negative.

Resolved, That Mr. Blount be heard by counsel, not exceeding two, to-morrow morning at 11 o'clock.

Ordered, That the Secretary furnish Mr. Blount with attested copies of such papers as he may point out, respecting the subject this day reported on by the committee.

FRIDAY, *July* 7, 1797.

Resolved, That the instructions to the committee to whom was referred that part of the President's message of the 3d instant which relates to a letter purporting to have been written by William Blount, esq., together with the papers accompanying the same, be amended by adding, after the word "records," the following words: "and particularly the papers of William Blount, esq."

Agreeably to the order of the day, the Senate proceeded to the consideration of the report of the above-mentioned committee, made yesterday.

On motion that such printers as may request it be accommodated with stands on the floor of the Senate, to enable them to take notes of their proceedings on the present occasion, it passed in the negative.

Mr. Blount notified the Senate that Jared Ingersoll and Alexander J. Dallas are the counsel he has employed, agreeably to the vote of the Senate passed yesterday.

The President requested Mr. Blount to declare whether or not he was the author of a letter a copy of which was communicated with the message of the President of the United States of the 3d instant.

Mr. Blount declined to answer.

On motion, in consequence of the request of the counsel above mentioned that they have until Monday next to prepare themselves to show cause why the report of the committee should not be adopted, after debate it was agreed that the question before the Senate be postponed for the purpose of receiving a special message from the House of Representatives.

SATURDAY, *July* 8, 1797.

The Senate resumed the consideration of the report of the committee to whom was referred that part of the President's message which relates to a letter purporting to have been written by William Blount, esq., together with the papers accompanying the same.

On motion, Mr. Justice Smith was desired to attend and administer the oath to such witnesses as might be adduced.

On motion, Mr. Martin and Mr. Cocke, of the Senate, being sworn, severally testified,

on inspection of the letter said to be written by Mr. Blount, that it was his handwriting, they being acquainted therewith, and having seen him write.

The President then said:

"William Blount, esq., you have now an opportunity, agreeably to the vote of Senate, in pursuance of your own request, by your counsel, to show cause why the report of the committee should not be adopted."

Mr. Blount was heard by his counsel, Mr. Ingersoll and Mr. Dallas; and,

After debate,

A motion was made to postpone the consideration of the report of the committee to the next session of Congress; and it was decided in the negative—yeas 7, nays 19; as follows:

YEAS—Messrs. Bloodworth, Brown, Cocke, Gunn, Martin, Tazewell, and Tatnall.

NAYS—Messrs. Bingham, Bradford, Foster, Goodhue, Henry, Hillhouse, Howard, Hunter, Latimer, Laurance, Livermore, Marshall, Read, Ross, Rutherfurd, Sedgwick, Tichenor, Tracy, and Vining.

On the question to agree to the report of the committee, as follows:

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Ross, Stockton, Henry, Sedgwick, and Read.]

The committee to whom was referred that part of the President's message which relates to a letter purporting to have been written by William Blount, esq., one of the Senators from the State of Tennessee, together with the papers accompanying the same, having had the same under their consideration, beg leave to make a further report:

That Mr. Blount, having declined an acknowledgment or denial of the letter imputed to him, and having failed to appear to give any satisfactory explanation respecting it, your committee sent for the original letter, which accompanies this report, and it is in the following words:

COLONEL KING'S IRON WORKS,
April 21, 1797.

DEAR CAREY: I wished to have seen you before I returned to Philadelphia, but I am obliged to return to the session of Congress, which commences on the 15th of May.

Among other things that I wished to have seen you about was the business Captain Chesholm mentioned to the British minister last winter at Philadelphia.

I believe, but am not quite sure, that the plan then talked of will be attempted this fall; and if it is attempted it will be in a much larger way than then talked of, and if the Indians act their part I have no doubt but it will succeed. A man of consequence has gone to England about the business, and if he makes arrangements as he expects I shall myself have a hand in the business, and probably shall be at the head of the business on the part of the British. You are, however, to understand that it is not yet quite certain that the plan will be attempted, yet you will do well to keep things in a proper train of action in case it should be attempted, and to do so will require all your management—I say require all your management, because you must take care in whatever you say to Rogers or anybody else not to let the plan be discovered by Hawkins, Dinsmore, Byers, or any other person in the interest of the United States or Spain.

If I attempt this plan I shall expect to have you and all my Indian country and Indian friends with me; but you are now in good business, I hope, and you are not to risk the loss of it by saying anything that will hurt you until you again hear from me. Where Captain Chesholm is I do not know; I left him in Philadelphia in March, and he frequently visited the minister and spoke upon the subject; but I believe he will go into the Creek Nation by way of South Carolina or Georgia. He gave out he was going to England, but I did not believe him. Among other things that you may safely do will be to keep up my consequence with Watts and the Creeks and Cherokees generally, and you must by no means say anything in favor of Hawkins, but, as often as you can with safety to yourself, you may teach the Creeks to believe he is no better than he should be. Any power or consequence he gets will be against our plan. Perhaps Rogers, who has no office to lose, is the best man to give out talks against Hawkins. Read the letter to Rogers, and if you think it best to send it to him put a wafer in it and forward it to him by a safe hand, or perhaps you had best send for him to come to you, and speak to him yourself respecting the state and prospect of things.

I have advised you in whatever you do to take care of yourself. I have now to tell you to take care of me, too, for a discovery of the plan would prevent the success and much injure all the parties concerned.

It may be that the commissioners may not run the line as the Indians expect or wish, and in that case it is probable the Indians may be taught to blame me for making the treaty. To such complaints against me, if such there are, it may be said by my friends,

at proper times and places, that Doublehead confirmed the treaty with the President at Philadelphia, and receives as much as $5,000 a year, to be paid to the nation, over and above the first price; indeed, it may with truth be said that, though I made the treaty, that I made it by the instructions of the President, and, in fact, it may with truth be said that I was by the President instructed to purchase much more land than the Indians would agree to sell. This sort of talk will be throwing all the blame off me upon the late President, and as he is now out of office it will be of no consequence how much the Indians blame him. Among other things that may be said for me is that I was not at the running of the line, and that if I had been it would have been run more to their satisfaction. In short, you understand the subject, and must take care to give out the proper talks, to keep up my consequence with the Creeks and Cherokees. Can't Rogers contrive to get the Creeks to desire the President to take Hawkins out of the nation? For if he stays in the Creek Nation and gets the good-will of the nation he can and will do great injury to our plan. When you have read this letter over three times, then burn it. I shall be at Knoxville in July or August, when I will send for Watts and give him the whisky I promised him.

I am, &c.,

WILLIAM BLOUNT.

Two Senators, now present in the Senate, have declared to the committee that they are well acquainted with the handwriting of Mr. Blount, and have no doubt that this letter was written by him. Your committee have examined many letters from Mr. Blount to the Secretary of War, a number of which are herewith submitted, as well as the letter addressed by Mr. Blount to Mr. Cook, his colleague in the Senate, and to this committee, respecting the business now under consideration, and find them all to be of the same handwriting with the letter in question. Mr. Blount has never denied this letter, but, on the other hand, when the copy transmitted to the Senate was read in his presence, on the 3d instant, he acknowledged in his place that he had written a letter to Carey, of which he had preserved a copy, but could not then decide whether the copy read was a true one. Your committee are therefore fully persuaded that the original letter now produced was written and sent to Carey by Mr. Blount. They also find that this man Carey, to whom it was addressed, is, to the knowledge of Mr. Blount, in the pay and employment of the United States as their interpreter to the Cherokee Nation of Indians, and an assistant in the public factory at Tellico Blockhouse. That Hawkins, who is so often mentioned in this letter as a person who must be brought into suspicion among the Creeks, and if possible driven from his station, is the superintendent of Indian affairs for the United States among the Southern Indians; Dinsmore is agent for the United States in the Cherokee Nation; and Byers, one of the agents in the public factory at Tellico Blockhouse.

The plan hinted at in this extraordinary letter to be executed under the auspices of the British is so capable of different constructions and conjectures that your committee at present forbear giving any decided opinion respecting it, except that to Mr. Blount's own mind it appeared to be inconsistent with the interests of the United States and of Spain, and he was therefore anxious to conceal it from both. But when they consider his attempts to seduce Carey from his duty as a faithful interpreter, and to employ him as an engine to alienate the affections and confidence of the Indians from the public officers of the United States residing among them; the measures he has proposed to excite a temper which must produce the recall or expulsion of our superintendent from the Creek Nation; his insidious advice tending to the advancement of his own popularity and consequence, at the expense and hazard of the good opinion which the Indians entertain of this Government and of the treaties subsisting between us and them, your committee have no doubt that Mr. Blount's conduct has been inconsistent with his public duty, renders him unworthy of a further continuance of his present public trust in this body, and amounts to a high misdemeanor. They therefore unanimously recommend to the Senate an adoption of the following resolution:

Resolved, That William Blount, esq., one of the Senators of the United States, having been guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator, be, and he hereby is, expelled from the Senate of the United States.

The report was adopted—yeas 25, nay 1; as follows:

YEAS—Messrs. Bingham, Bloodworth, Bradford, Brown, Cocke, Foster, Goodhue, Gunn, Henry, Hillhouse, Howard, Hunter, Latimer, Laurance, Livermore, Martin, Marshall, Read, Ross, Rutherfurd, Sedgwick, Tatnall, Tichenor, Tracy, and Vining.

Mr. Tazewell voted in the negative.

So it was

Resolved, That William Blount, esq., one of the Senators of the United States, having been guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator, be, and he hereby is, expelled from the Senate of the United States.

MONDAY, *July* 10, 1797.

Ordered, That the Secretary transmit to the executive of the State of Tennessee an attested copy of the proceedings of the Senate on the report of the committee, of the 6th instant, for the expulsion of William Blount.

Ordered, That the Secretary lay before the President of the United States an attested copy of the proceedings of the Senate on his message of the 3d instant, transmitting a letter signed William Blount, directed to Mr. Carey.

[Tenth Congress—First session.]

JOHN SMITH,

Senator from Ohio from October 25, 1803, *till he resigned, April* 25, 1808.

November 27, 1807, the Senate resolved that a committee be appointed to inquire whether it was compatible with the privileges of the Senate that Mr. Smith, against whom bills of indictment were found at the United States circuit court of Virginia for treason and misdemeanor, should be permitted longer to have a seat therein; and that the committee inquire into all the facts regarding the conduct of Mr. Smith as an alleged associate of Aaron Burr, and report to the Senate. December 31, the committee reported that the conspiracy of Aaron Burr and his associates was of such a character, and that its existence was so established by evidence, that it was incompatible with the privileges of the Senate that any person engaged in it should be permitted to hold a seat in the Senate. The committee submit to the Senate the evidence collected, and leave it to the Senate to determine whether the facts are sufficient to substantiate the participation of Mr. Smith in the conspiracy. The committee reported that the bills of indictment found against Mr. Smith in the United States circuit court at Richmond were precisely similar to those found against Aaron Burr; that owing to the fact that certain evidence was not admitted in the trial of Mr. Burr, the jury had found that he was "not proved to be guilty, under that indictment, by any evidence submitted to them"; that on account of this decision the counsel for the United States abandoned the prosecution against Mr. Smith; that the committee was not disposed to question the correctness of this decision on a case of treason before a court of criminal jurisdiction, but that whether the transactions proved against Aaron Burr did or did not amount, in technical language, to an overt act of levying war, there was no doubt in the minds of the committee that but for the vigilance and energy of the Government in crushing his designs they would have resulted in war; that a grand jury had charged Mr. Smith with being an accomplice in these designs, and that the fact that under the circumstances the prosecution against Mr. Smith had been abandoned did not, in the opinion of the committee, remove the imputation which the accusations of the grand jury had brought upon him; that the committee would not permit themselves to comment upon the evidence submitted or the answers which Mr. Smith had given as sufficient for his justification, but that they felt compelled to submit for the consideration of the Senate a resolution that by his participation in the conspiracy of Aaron Burr he had been guilty of conduct incompatible with his station as a Senator, and that he be expelled therefor. April 9, 1808, after long debate on the question to agree to the resolution, 19 voted yea and 10 nay; so that, two-thirds of the Senators not concurring therein, he was not expelled.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journal, 10th Cong., 1st sess., with the report of the committee from Annals of Congress, 10th Cong., 1st sess., vol. 1, pages 56–62.

Special references to the debates of each day are inserted below.

FRIDAY, *November* 27, 1807.

The Hon. John Smith, from the State of Ohio, attended.

On motion, the following resolution, having been amended, was agreed to:

"*Resolved*, That a committee be appointed to inquire whether it be compatible with the honor and privileges of this House that John Smith, a Senator from the State of Ohio, against whom bills of indictment were found at the circuit court of Virginia, held at Richmond in August last, for treason and misdemeanor, should be permitted any longer to have a seat therein; and that the committee do inquire into all the facts regarding the conduct of Mr. Smith as an alleged associate of Aaron Burr, and report the same to the Senate."

Ordered, That Messrs. Adams, Maclay, Franklin, Smith of Maryland, Pope, Thruston, and Anderson be the committee.

During the discussion of the preceding resolution,

Mr. Tiffin, by permission, read in his place a letter from Mr. Smith, as follows:

WASHINGTON, *November* 27, 1807.

DEAR SIR: Just having heard that a motion is pending in the Senate to appoint a committee to inquire into certain charges exhibited against me at Richmond by the late grand jury, I beg you, sir, to assure the Senate, in my name, that nothing will afford me more pleasure than to have a public investigation of the said charges, and an opportunity to vindicate my innocence, and I beg you, from your seat, to make this statement.

I am, dear sir, respectfully, yours, &c.,

JOHN SMITH.

Hon. Mr. TIFFIN.

[An account of the debate is found on pages 39–42 of Annals of Congress referred to in the head-note.]

MONDAY, *November* 30, 1807.

Mr. Adams stated that he was instructed by the committee appointed on the 27th instant to inquire into the conduct of John Smith, a Senator from the State of Ohio, to submit to the Senate the following resolution; which was read and agreed to:

"*Resolved*, That the President of the United States be requested to cause to be laid before the Senate such information as may be in his possession in relation to the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr."

Ordered, That the Secretary lay this resolution before the President of the United States.

Mr. Adams, from the same committee, also stated that he was instructed to submit to the Senate the following resolution; which was read and agreed to:

"*Resolved*, That the committee appointed on the 27th instant to inquire and report the facts respecting the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr, be authorized to extend their inquiries to any other facts which, in their opinion, would be incompatible with his duty as a Senator of the United States, and that they be authorized to send for persons, papers, and records."

WEDNESDAY, *December* 2, 1807.

The following written message was received from the President of the United States, by Mr. Coles, his secretary:

To the Senate of the United States:

In compliance with the request made in the resolution of the Senate of November 30 I must inform them that when the prosecutions against Aaron Burr and his associates were instituted I delivered to the Attorney-General all the evidence on the subject, formal and informal, which I had received, to be used by those employed in the prosecutions. On the receipt of the resolution of the Senate, I referred it to the Attorney-General, with a request that he would enable me to comply with it by putting into my hands such of the papers as might give information relative to the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr, and having this moment received from him the affidavit of Elias Glover, with an assurance that it is the only paper in his possession which is within the term of the request of the Senate, I now transmit it for their use.

TH. JEFFERSON.

DECEMBER 2, 1807.

The message was read.

Ordered, That the message and paper therein mentioned be referred to the committee appointed on the 27th of November last to inquire into the conduct of Mr. Smith as an alleged associate of Aaron Burr.

FRIDAY, *December* 4, 1807.

Mr. Adams stated that he was instructed by the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, to submit the following resolution; which was read and agreed to:

"*Resolved*, That the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, be authorized to admit the attendance of Mr. Smith."

MONDAY, *December* 7, 1807.

Mr. Adams stated that he was instructed by the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, to submit the following resolution; which was read and agreed to:

"*Resolved*, That the committee appointed to inquire and report the facts relating to the conduct of John Smith, a Senator from the State of Ohio, be authorized to cause to be printed, under their inspection, all such documents and papers touching the subject-matter of the inquiries on which they have been appointed as may appear necessary to the committee, previous to the presentation of the same to the Senate."

THURSDAY, *December* 31, 1807.

Mr. Adams stated that the committee appointed on the 27th of November last "to inquire whether it be compatible with the honor and privileges of this House that John Smith, a Senator from the State of Ohio, against whom bills of indictment were found at the circuit court of Virginia, held at Richmond in August last, for treason and mis-

demeanor, should be permitted any longer to have a seat therein," were ready to report, and he made the following motion; which was read and agreed to:

Ordered, That John Smith, a Senator from the State of Ohio, be notified by the Vice-President to attend in his place.

The Vice-President accordingly notified Mr. Smith in the words following:

"SIR: You are hereby required to attend the Senate in your place without delay.
"By order of the Senate.

"GEO. CLINTON,
"*President of the Senate.*

"JOHN SMITH, Esq.,
"*Senator from the State of Ohio.*"

And Mr. Smith attended.

Whereupon,

Mr. Adams made report from the committee last mentioned; and the report was read.

On motion,

Ordered, That three hundred copies thereof be printed for the use of the Senate.

Mr. Adams also, from the same committee, made a further report, which was read.

Ordered, That it lie for consideration.

The queries addressed by the committee to Mr. Smith, and his answers to the same, were read; also the testimony of James Taylor, esq., and Mr. Smith's letter to the committee relating thereto.

A motion was made by Mr. Hillhouse that Mr. Smith's answers be printed for the use of the Senate; and objections arising thereon that the said answer contained exceptionable matter which ought not to be printed,

It was agreed, by consent of Mr. Smith, that he should take back his answers, and expunge such exceptionable matters, and that the answers should then be printed, under the inspection of the chairman of the committee.

[An account of the debate is found on pages 62, 63 of the Annals of Congress referred to in the head-note.]

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Adams, Maclay, Franklin, Smith of Maryland Pope, Thruston, and Anderson.]

Your committee are of opinion that the conspiracy of Aaron Burr and his associates against the peace, union, and liberties of these States is of such a character, and that its existence is established by such a mass of concurring and mutually corroborative testimony, that it is incompatible, not only with the honor and privileges of this House, but with the deepest interests of this nation, that any person engaged in it should be permitted to hold a seat in the Senate of the United States.

Whether the facts, of which the committee submit herewith such evidence as, under the order of the Senate, they have been able to collect, are sufficient to substantiate the participation of Mr. Smith in that conspiracy or not will remain for the Senate to decide.

The committee submit also to the consideration of the Senate the correspondence between Mr. Smith and them, through their chairman, in the course of their meetings. The committee have never conceived themselves invested with authority to try Mr. Smith. Their charge was to report an opinion relating to the honor and privileges of the Senate and the facts relating to the conduct of Mr. Smith. Their opinion, indeed, cannot be expressed in relation to the privilege of the Senate without relating, at the same time, to Mr. Smith's right of holding a seat in this body; but in that respect the authority of the committee extends only to proposal, and not to decision. But as he manifested a great solicitude to be heard before them, they obtained permission from the Senate to admit his attendance, communicated to him the evidence in their possession by which he was inculpated, furnished him in writing with the questions arising from it which appeared to them material, and received from him the information and explanations herewith submitted as part of the facts reported. But Mr. Smith has claimed as a right to be heard in his defense by counsel, to have compulsory process for witnesses, and to be confronted with his accusers, as if the committee had been a circuit court of the United States. But it is before the Senate itself that your committee conceived it just and proper that Mr. Smith's defense of himself should be heard. Nor have they conceived themselves bound in this inquiry by any other rules than those of natural justice and equity due to a brother Senator on the one part, and to their country on the other.

Mr. Smith represents himself on this inquiry as solitary, friendless, and unskilled, contending for rights which he intimates are denied him; and the defender of Senatorial

privileges which he seems apprehensive will be refused him by Senators, liable, so long as they hold their offices, to have his case made their own. The committee are not unaware that in the vicissitudes of human events no member of this body can be sure that his conduct will never be made a subject of inquiry and decision before the assembly to which he belongs. They are aware that, in the course of proceeding which the Senate may now sanction, its members are marking out a precedent which may hereafter apply to themselves. They are sensible that the principles upon which they have acted ought to have the same operation upon their own claims to privilege as upon those of Mr. Smith; the same relation to the rights of their constituents which they have to those of the legislature which he represents. They have deemed it their duty to advance in the progress of their inquiry with peculiar care and deliberation. They have dealt out to Mr. Smith that measure which, under the supposition of similar circumstances, they would be content to find imparted to themselves; and they have no hesitation in declaring that under such imputations, colored by such evidence, they should hold it a sacred obligation to themselves, to their fellow-Senators, and to their country to meet them by direct, unconditional acknowledgment or denial, without seeking a refuge from the broad face of day in the labyrinth of technical forms.

In examining the question whether these forms of judicial proceedings or the rules of judicial evidence ought to be applied to the exercise of that censorial authority which the Senate of the United States possesses over the conduct of its members, let us assume as the test of their application either the dictates of unfettered reason, the letter and spirit of the Constitution, or precedents domestic or foreign, and your committee believe that the result will be the same; that the power of expelling a member must, in its nature, be discretionary, and in its exercise always more summary than the tardy process of judicial tribunals.

The power of expelling a member for misconduct results on the principles of common sense from the interest of the nation that the high trust of legislation should be invested in pure hands. When the trust is elective it is not to be presumed that the constituent body will commit the deposit to the keeping of worthless characters. But when a man whom his fellow-citizens have honored with their confidence on the pledge of his spotless reputation has degraded himself by the commission of infamous crimes which become suddenly and unexpectedly revealed to the world, defective indeed would be that institution which should be impotent to discard from its bosom the contagion of such a member, which should have no remedy of amputation to apply until the poison had reached the heart.

The question upon the trial of a criminal cause before the courts of common law is not between guilt and innocence, but between guilt and the possibility of innocence. If a doubt can possibly be raised, either by the ingenuity of the party or of his counsel, or by the operation of general rules in their unforeseen application to particular cases, that doubt must be decisive for acquittal, and the verdict of not guilty perhaps in nine cases out of ten means no more than that the guilt of the party has not been demonstrated in the precise, specific, and narrow forms prescribed by law. The humane spirit of the laws multiplies the barriers for the protection of innocence and freely admits that these barriers may be abused for the shelter of guilt. It avows a strong partiality favorable to the person upon trial, and acknowledges the preference that ten guilty should escape rather than that one innocent should suffer. The interest of the public that a particular crime should be punished is but as one to ten, compared with the interest of the party, that innocence should be spared. Acquittal only restores the party to the common rights of every other citizen; it restores him to no public trust; it invests him with no public confidence; it substitutes the sentence of mercy for the doom of justice, and to the eyes of impartial reason in the great majority of cases must be considered rather as a pardon than a justification.

But when a member of a legislative body lies under the imputation of aggravated offenses and the determination upon his cause can operate only to remove him from a station of extensive powers and important trust, this disproportion between the interest of the public and the interest of the individual disappears; if any disproportion exists it is of an opposite kind. It is not better that ten traitors should be members of this Senate than that one innocent man should suffer expulsion. In either case, no doubt, the evil would be great. But in the former it would strike at the vitals of the nation; in the latter it might, though deeply to be lamented. only be the calamity of an individual.

By the letter of the Constitution the power of expelling a member is given to each of the two Houses of Congress, without any limitation other than that which requires a concurrence of two-thirds of the votes to give it effect.

The spirit of the Constitution is perhaps in no respect more remarkable than in the solicitude which it has manifested to secure the purity of the Legislature by that of the elements of its composition. A qualification of age is made necessary for the members

to insure the maturity of their judgment; a qualification of long citizenship to insure a community of interests and affections between them and their country; a qualification of residence to provide a sympathy between every member and the portion of the Union from which he is delegated; and to guard, as far as regulation can guard, against every bias of personal interest and every hazard of interfering duties, it has made every member of Congress ineligible to office which he contributed to create, and every officer of the Union incapable of holding a seat in Congress. Yet, in the midst of all this anxious providence of legislative virtue, it has not authorized the constituent body to recall in any case its representative. It has not subjected him to removal by impeachment; and when the darling of the people's choice has become their deadliest foe can it enter the imagination of a reasonable man that the sanctuary of their legislation must remain polluted with his presence until a court of common law with its pace of snail can ascertain whether his crime was committed on the right or on the left bank of a river; whether a puncture of difference can be found between the words of the charge and the words of the proof; whether the witnesses of his guilt should or should not be heard by his jury; and whether he was punishable because present at an overt act or intangible to public justice because he only contrived and prepared? Is it conceivable that a traitor to that country which has loaded him with favors, guilty to the common understanding of all mankind, should be suffered to return unquestioned to that post of honor and confidence where, in the zenith of his good fame, he had been placed by the esteem of his countrymen, and in defiance of their wishes, in mockery of their fears, surrounded by the public indignation, but inaccessible to its bolt, pursue the purposes of treason in the heart of the national councils? Must the assembled rulers of the land listen with calmness and indifference session after session to the voice of notorious infamy until the sluggard step of municipal justice can overtake his enormities? Must they tamely see the lives and fortunes of millions, the safety of present and future ages, depending upon his vote recorded with theirs, merely because the abused benignity of general maxims may have remitted to him the forfeiture of his life?

Such, in very supposable cases, would be the unavoidable consequences of a principle which should offer the crutches of judicial tribunals as an apology for trippling the Congressional power of expulsion. Far different, in the opinion of your committee, is the spirit of our Constitution. They believe that the very purpose for which this power was given was to preserve the Legislature from the first approaches of infection; that it was made discretionary because it could not exist under the procrastination of general rules; that its process must be summary, because it would be rendered nugatory by delay.

Passing from the constitutional view of the subject to that which is afforded by the authority of precedent, your committee find that since the establishment of our present National Legislature there has been but one example of expulsion from the Senate. In that case the member implicated was called upon in the first instance to answer whether he was the author of a letter the copy of which only was produced, and the writing of which was the cause of his expulsion. He was afterwards requested to declare whether he was the author of the letter itself, and declining in both cases to answer, the fact of his having written it was established by a comparison of his handwriting and by the belief of persons who had seen him write, upon inspection of the letter. In all these points the committee perceive the admission of a species of evidence which in courts of criminal jurisdiction would be excluded, and in the resolution of expulsion the Senate declared the person inculpated guilty of a high misdemeanor, although no presentment or indictment had been found against him and no prosecution of law was ever commenced upon the case.

This event occurred in July, 1797. About fifteen months before that time, upon an application from the legislature of Kentucky requesting an investigation by the Senate of a charge against one of the members from that State of perjury, which had been made in certain newspaper publications, but for which no prosecution had been commenced, the Senate did adopt by a majority of 16 votes to 8 the report of a committee purporting that the Senate had no jurisdiction to try the charge, and that the memorial of the Kentucky legislature should be dismissed. There were, indeed, very sufficient reasons of a different kind assigned in the same report for not pursuing the investigation in that particular case any further; and your committee believe that in the reasoning of that report some principles were assumed and some inferences drawn which were altogether unnecessary for the determination of that case which were adopted without a full consideration of all their consequences, and the inaccuracy of which was clearly proved by the departure from them in the instance which was so soon afterwards to take place. It was the first time that a question of expulsion had ever been agitated in Congress since the adoption of the Constitution, and the subject being thus entirely new, was considered perhaps too much with reference to the particular circumstances of the moment, and not enough upon the numerous contingencies to which the general question

might apply. Your committee state this opinion with some confidence, because of the sixteen Senators who in March, 1796, voted for the report dismissing the memorial of the Kentucky legislature eleven, on the subsequent occasion in July, 1797, voted also for that report which concluded with a resolution for the expulsion of Mr. Blount. The other five were no longer present in the Senate. Yet, if the principles advanced in the first report had been assumed as the ground of proceeding at the latter period the Senate would have been as impotent of jurisdiction upon the offense of Mr. Blount as they had supposed themselves upon the allegation against Mr. Marshall.

Those parts of the fifth and sixth articles amendatory to the Constitution upon which the report in the case of Mr. Marshall appears to rely for taking away the jurisdiction of the Senate your committee suppose can only be understood as referring to prosecutions at law; to suppose that they were intended as restrictions upon powers expressly granted by the Constitution to the Legislature or either of its branches would in a manner annihilate the power of impeachment as well as that of expulsion. It would lead to the absurd conclusion that the authority given for the purpose of removing iniquity from the seats of power should be denied its exercise in precisely those cases which most loudly call for its energies. It would present the singular spectacle of a legislature vested with powers of expelling its members, of impeaching, removing, and disqualifying public officers for trivial transgressions beneath the cognizance of the law, yet forbidden to exert them against capital or infamous crimes.

These two articles were in substance borrowed from similar regulations contained in that justly celebrated statute which for so many ages has been distinguished by the name of the Great Charter of England. Yet in that country, where they are recognized as the most solid foundations of the liberties of the nation, they have never been considered as interfering with the power of expelling a member, exercised at all times by the House of Commons; a power which there, however, rests only upon parliamentary usage, and has never been bestowed, as in the Constitution of the United States, by any act of supreme legislation. From a number of precedents which have been consulted it is found that the exercise of this authority there has always been discretionary and its process always far otherwise than compendious in the prosecutions before the judicial courts. So far, indeed, have they been from supposing a conviction at law necessary to precede a vote of expulsion that in one instance a resolution to demand a prosecution appears immediately after the adoption of the resolution to expel. In numerous cases the member submits to examination, adduces evidence in his favor, and has evidence produced against him, with or without formal authentication, and the discretion of the house is not even restricted by the necessary concurrence of more than a bare majority of the votes.

The provision in our Constitution which forbids the expulsion of a member by an ordinary majority and requires for this act of rigorous and painful duty the assent of two-thirds your committee consider as a wise and sufficient guard against the possible abuse of this legislative discretion. In times of heat and violent party spirit the rights of the minority might not always be duly respected if a majority could expel their members under no other control than that of their own discretion. The operation of this rule is of great efficacy, both over the proceedings of the whole body and over the conduct of every individual member. The times when the most violent struggles of contending parties occur—when the conflict of opposite passions is most prone to excess—are precisely the times when the numbers are most equally divided; when the majority amounts to the proportion of two-thirds the security in its own strength is of itself a guard against extraordinary stretches of power; when the minority dwindles to the proportion of one-third its consciousness of weakness dissuades from any attempts to encroach upon the rights of the majority, which might provoke retaliation. But if expulsion were admissible only as a sequel to the issue of a legal prosecution or upon the same principles and forms of testimony which are established in the criminal courts, your committee can see no possible reason why it should be rendered still more imbecile by the requisition of two-thirds to give it effect.

It is now the duty of your committee to apply the principles which they have here endeavored to settle and elucidate to the particular case upon which the Senate have directed them to report. The bills of indictment found against Mr. Smith at the late session of the circuit court of the United States at Richmond (copies of which are herewith submitted) are precisely similar to those found against Aaron Burr. From the volume of printed evidence communicated by the President of the United States to Congress, relating to the trial of Aaron Burr, it appears that a great part of the testimony which was essential to his conviction upon the indictment for treason was withheld from the jury upon an opinion of the court that Aaron Burr, not having been present at the overt act of treason alleged in the indictment, no testimony relative to his conduct or declarations elsewhere, and subsequent to the transactions on Blannerhasset's Island, could be admitted. And in consequence of this suppression of evidence the traverse jury found a verdict "that Aaron Burr was not proved to be guilty, under that indictment, by any evidence

submitted to them." It was also an opinion of the court that none of the transactions of which evidence was given on the trial of Aaron Burr did amount to an overt act of levying war, and, of course, that they did not amount to treason. These decisions, forming the basis of the issue upon the trials of Burr, anticipated the event which must have awaited the trials of the bills against Mr. Smith, who, from the circumstances of his case, must have been entitled to the benefit of their application; they were the sole inducements upon which the counsel for the United States abandoned the prosecution against him.

Your committee are not disposed now to question the correctness of these decisions on a case of treason before a court of criminal jurisdiction. But whether the transactions proved against Aaron Burr did or did not amount, in technical language, to an overt act of levying war, your committee have not a scruple of doubt on their minds that but for the vigilance and energy of the Government and of faithful citizens under its directions in arresting their progress and in crushing his designs, they would, in a very short lapse of time, have terminated not only in a war, but in a war of the most horrible description, in a war at once foreign and domestic. As little hesitation have your committee in saying that if the daylight of evidence, combining one vast complicated intention with overt acts innumerable, be not excluded from the mind by the curtain of artificial rules the simplest understanding cannot but see what the subtlest understanding cannot disguise, crimes before which ordinary treason whitens into virtue; crimes of which war is the mildest feature. The debauchment of our Army, the plunder and devastation of our own and foreign territories, the dissolution of our national Union, and the root of interminable civil war were but the means of individual aggrandizement, the steps to projected usurpation. If the ingenuity of a demon were tasked to weave into one composition all the great moral and political evils which could be inflicted upon the people of these States it could produce nothing more than a texture of war, dismemberment, and despotism.

Of these designs a grand jury composed of characters as respectable as this nation can boast have upon the solemnity of their oaths charged John Smith with being an accomplice. The reasons upon which the trial of this charge has not been submitted to the verdict of a jury have been shown by your committee and are proved by the letter from the attorney of the United States for the district of Virginia, herewith reported. And your committee are of opinion that the dereliction of the prosecution on these grounds cannot in the slightest degree remove the imputation which the accusations of the grand jury have brought to the door of Mr. Smith.

Your committee will not permit themselves to comment upon the testimony which they submit herewith to the Senate; nor upon the answers which Mr. Smith has given as sufficient for his justification. Desirous as the committee have been that this justification might be complete, anxiously as they wished for an opportunity declaring their belief of his innocence, they can neither control nor dissemble the operation of the evidence upon their minds; and, however painful to their feelings, they find themselves compelled by a sense of duty paramount to every other consideration to submit to the Senate for their consideration the following resolution:

Resolved, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr against the peace, union, and liberties of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States, and that he be therefore, and hereby is, expelled from the Senate of the United States.

MONDAY, *January* 4, 1808.

Mr. Adams laid before the Senate a letter from Mr. Smith, directed to the chairman of the committee of inquiry appointed 27th November, which letter Mr. Smith requested might be considered as a part of his answer; and the letter was read.

TUESDAY, *January* 5, 1808.

On motion by Mr. Adams, the minutes of the committee of inquiry appointed the 27th of November last, on the conduct of John Smith, a Senator from the State of Ohio, also sundry papers relative to the inquiry, were read, and

On motion by Mr. Bradley, it was agreed that the report of the committee be the order of the day for Thursday next.

THURSDAY, *January* 7, 1808.

Agreeably to the order of the day, the Senate resumed the consideration of the report of the committee of inquiry appointed on the 27th of November last, on the conduct of John Smith, a Senator from the State of Ohio; and the report was read.

Mr. Smith's letter to the President, of the 4th instant, was also read.

On request of Mr. Smith, that he be informed specifically of the charges against him;

that he be allowed to make defense against such charges, and process to compel the attendance of witnesses necessary in his defense, and the privilege of being heard by counsel;

After debate,

A motion was made by Mr. Hillhouse that it be

Resolved, That Mr. Smith be heard by counsel, not exceeding two, to show cause why the report of the committee should not be adopted;

And, on the question to agree to this resolution, it passed unanimously in the affirmative—yeas 32.

The yeas and nays having been required by one-fifth of the Senators present,

Those who voted are Messrs. Adams, Anderson, Bayard, Bradley, Condit, Crawford, Gaillard, Giles, Gilman, Goodrich, Gregg, Hillhouse, Howland, Kitchel, Maclay, Mathewson, Milledge, Mitchill, Moore, Parker, Pickering, Pope, Reed, Robinson, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, Tiffin, Turner, and White.

On motion,

Ordered, That Wednesday next be assigned for the hearing.

[An account of the debate is found on pages 66–78 of the Annals of Congress referred to in the head-note.]

TUESDAY, *January* 12, 1808.

On request of Mr. Smith, of Ohio, for a copy of the minutes of the committee appointed on the 27th of November last, to inquire into his conduct, and also a copy of all the correspondence between them and himself,

The following motion was made by Mr. Crawford:

Ordered, That a copy of the minutes of the committee appointed on the 27th of November last, to inquire into the conduct of John Smith, of Ohio, and also a copy of the correspondence between the committee and said Smith, be furnished to the said John Smith.

And on the question to agree to this motion, it was determined in the affirmative—yeas 17, nays 9.

The yeas and nays having been required by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Crawford, Goodrich, Gregg, Hillhouse, Howland, Mathewson, Milledge, Mitchill, Pickering, Pope, Reed, Smith of New York, Sumter, Thruston, Turner, and White.

Those who voted in the negative are Messrs. Anderson, Bradley, Condit, Giles, Gilman, Kitchel, Moore, Parker, and Smith of Tennessee.

WEDNESDAY, *January* 13, 1808.

Agreeably to the order of the day, the Senate resumed the consideration of the report of the committee appointed the 27th of November last, to inquire into the conduct of John Smith, a Senator from the State of Ohio.

The President stated to Mr. Smith that he had now an opportunity to show cause why the report of the committee should not be adopted, and he was desired to name his counsel.

He accordingly informed the Senate that he had engaged Luther Martin and Francis S. Key, esquires, as counsel; and

On motion of Mr. Bradley, Shall Mr. Key be admitted as counsel for Mr. Smith? it was determined in the affirmative; and

On motion, Shall Mr. Martin be admitted as counsel for Mr. Smith? it was determined in the negative.

On request by Mr. Bayard that Mr. Smith inform the Senate whether, under present circumstances, he is ready to proceed,

Mr. Smith, by his counsel, offered his affidavit, together with the following application:

"John Smith, of Ohio, offers his affidavit to the honorable Senate, and requests a reasonable time to procure the testimony therein stated, and the proper means to enable him to produce it."

The affidavit was read.

The letter of the 4th of January to the President from Mr. Smith, requesting to be heard by counsel, was again read.

On motion by Mr. Giles,

Ordered, That the affidavit and application, together with the subsequent report of the committee appointed 27th of November last to inquire into the conduct of John Smith, a Senator from the State of Ohio, be printed for the use of the Senate.

On motion by Mr. Gilman, it was agreed that the further consideration of the application of Mr. Smith, made this day by his counsel, be postponed until to-morrow.

THURSDAY, *January* 14, 1808.

Mr. Adams moved that sundry amendments and notes of reference be entered upon the minutes of the proceedings of the committee appointed on the 27th of November last to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged accomplice of Aaron Burr; which were read and ordered to be entered accordingly.

* * * * * * *

Agreeably to the order of the day, the Senate resumed the consideration of the application of John Smith, a Senator from the State of Ohio, filed yesterday, as follows: "John Smith, of Ohio, offers his affidavit to the honorable Senate, and requests a reasonable time to procure the testimony therein stated, and the proper means to enable him to produce it."

Whereupon,

A motion was made by Mr. Giles that the further consideration of the resolution reported by the committee for the expulsion of John Smith from this House be postponed until the — day of ——— next, on which day the Senate will proceed to the final hearing of the said John Smith, with such testimony as he shall then offer to them, to show cause why the said resolution should not be adopted by the Senate.

Ordered, That this motion be referred to Messrs. Anderson, Giles, Adams, Crawford, and Bayard, to consider and report thereon.

The following motion, made by Mr. Bayard, was referred to the above-mentioned committee:

"*Resolved*, That John Smith, of Ohio, having made affidavit of the materiality of witnesses now absent, by whom, he states, he will be able to disprove the charges made against him, that he be allowed time till the — day of ——— to obtain the testimony of any witnesses, and to procure any evidence which he may deem material in his defense."

The following motion, made by Mr. Crawford, was referred to the same committee:

"*Resolved*, That the consideration of the resolution for the expulsion of John Smith be postponed until the — day of ——— next, on which day the Senate will proceed to hear the testimony of such witnesses as may then attend on the part of Mr. Smith, or against him, which will have a tendency to destroy or support the testimony of Elias Glover, Peter Taylor, and Col. James Taylor."

The following motion, made by Mr. Bayard, was also referred to the same committee:

"*Resolved*, That the Senate will allow John Smith, of Ohio, to adduce, in his defense against the charges made against him, the depositions of any witnesses he may deem material in his defense, and also the testimony of witnesses whom he may bring to the bar of the Senate, and all other evidence which he may deem material."

On motion,

Ordered, That the affidavit of John Smith, filed on the 13th instant, be referred to the same committee, to consider and report thereon.

[An account of the debate is found on pages 84, 85 of the Annals of Congress referred to in the head-note.]

SATURDAY, *January* 16, 1808.

Mr. Anderson, from the committee to whom was referred several resolutions which were offered to the consideration of the Senate, in the case of John Smith, Senator from the State of Ohio, made report; which was read for consideration.

[For report, see proceedings Wednesday, January 20, 1808.]

MONDAY, *January* 18, 1808.

On motion by Mr. Anderson to proceed to the examination of James Taylor, in the case of John Smith, a Senator from the State of Ohio,

A motion was made by Mr. Maclay to postpone this motion, and to go into the consideration of the report of the committee appointed 27th November to inquire into the conduct of John Smith, a Senator from the State of Ohio; and it was determined in the negative.

On motion by Mr. Anderson,

"*Resolved*, That Col. James Taylor be examined at the bar of the Senate in the case of John Smith, a Senator from the State of Ohio; that the questions put to Mr. Taylor be reduced to writing and put to him by the President, who shall decide upon the propriety of each question proposed."

James Taylor was called accordingly, and the oath was administered to him by the President in the form following:

"You solemnly swear that you will make true answers to such questions as shall be put to you touching the case of John Smith, a Senator from the State of Ohio, now in hearing."

On motion by Mr. Anderson,

Ordered, That the Secretary of the Senate notify John Graham that he is requested to

attend the Senate to give evidence in the case of John Smith, a Senator from the State of Ohio;

And Mr. Graham attended.

Mr. Smith attended with his counsel, and, after the examination and cross-examination of Mr. Taylor,

On motion, the Senate adjourned to 11 o'clock to-morrow morning.

[An account of the debate is found on pages 87–89 of the Annals of Congress referred to in the head-note.]

TUESDAY, *January* 19, 1808.

The Senate resumed the examination of the witnesses in the case of John Smith, a Senator from the State of Ohio.

Mr. Smith attended with his counsel.

James Taylor was again called, examined, and cross-examined.

On motion by Mr. Adams, Mr. Taylor was requested to file attested copies of extracts of certain letters written by him to the Secretary of State, and read this morning as part of his testimony.

John Graham was called, sworn, and examined.

James Taylor was again called and cross-examined.

Mr. Pope submitted the following motion for consideration:

"*Resolved*, That the Secretary of the Senate do issue a subpœna, in the usual form, to cause to be summoned to appear before the Senate, on the first Monday in March next, Elias Glover, then and there to give testimony in the case of John Smith, a Senator from the State of Ohio, regarding his alleged participation in the conspiracy of Aaron Burr."

WEDNESDAY, *January* 20, 1808.

On motion by Mr. Adams, Mr. Tiffin, a Senator from the State of Ohio, was sworn as a witness in the case of John Smith, Senator from that State, examined and cross-examined.

Mr. Smith attended with his counsel.

The Senate proceeded to consider the report of the committee to whom was referred several resolutions submitted to the Senate in the case of John Smith, a Senator from the State of Ohio, made on the 16th instant.

On motion to amend the report and strike out the words "first day of March next," it was determined in the negative—yeas 10, nays 21.

The yeas and nays being required by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anderson, Condit, Gilman, Kitchel, Maclay, Mathewson, Moore, Parker, Robinson, and Smith of Tennessee.

Those who voted in the negative are Messrs. Adams, Bayard, Crawford, Franklin, Gaillard, Giles, Goodrich, Gregg, Hillhouse, Howland, Milledge, Mitchill, Pickering, Pope, Reed, Smith of Maryland, Smith of New York, Sumter, Thruston, Turner, and White.

On motion to adopt the report of the committee, which is as follows:

"*Resolved*, That on the 1st day of March next the Senate will receive such testimony as John Smith, Senator from the State of Ohio, may then adduce in his defense, and that the Senate will then proceed to the final consideration of the report of the committee appointed on the 27th of November last, to inquire into his conduct as an alleged associate of Aaron Burr; provided, in case Mr. Smith shall adduce evidence to discredit any witness whose testimony has been made use of against him, that he shall make it appear to the Senate that reasonable notice had been given to the witness so intended to be discredited of the time and place appointed for the taking of such evidence, that he was served with a copy of this resolution,"

It was determined in the affirmative—yeas 25, nays 6.

The yeas and nays having been required by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Adams, Anderson, Bayard, Condit, Crawford, Franklin, Gaillard, Giles, Goodrich, Gregg, Hillhouse, Howland, Kitchel, Milledge, Mitchill, Pickering, Pope, Reed, Smith of Maryland, Smith of New York, Smith of Tennessee, Sumter, Thruston, Turner, and White.

Those who voted in the negative are Messrs. Gilman, Maclay, Mathewson, Moore, Parker, and Robinson.

On motion by Mr. Adams,

"*Resolved*, That the Secretary of the Senate do procure, from the clerk of the circuit court of the United States for the district of Virginia, certified copies of the papers read in that court on the trial of Aaron Burr, and originally published in the Ohio Gazette, under the signature of Querist."

On motion by Mr. Adams,

"*Resolved*, That the Secretary of the Senate do procure a file of the newspaper called the Enquirer, edited at Richmond by Thomas Ritchie, for the year 1807."

The motion by Mr. Pope, that the Secretary of the Senate issue a subpœna, was amended as follows:

"*Resolved*, That the Secretary of the Senate do issue a summons, in the usual form, to cause to be summoned to appear before the Senate, on the first day in March next, Elias Glover and William McFarland, then and there to give testimony in the case of John Smith, a Senator from the State of Ohio, regarding his alleged participation in the conspiracy of Aaron Burr."

And on the question to agree to this motion as amended, it was determined in the negative—yeas 7, nays 23.

The yeas and nays having been required by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Goodrich, Hillhouse, Pickering, Pope, Smith of Maryland, and White.

Those who voted in the negative are Messrs. Adams, Anderson, Bradley, Condit, Crawford, Franklin, Gaillard, Giles, Gilman, Gregg, Howland, Kitchel, Maclay, Mathewson, Milledge, Mitchill, Parker, Reed, Robinson, Smith of New York, Smith of Tennessee, Sumter, and Turner.

[An account of the debate is found on pages 90–98 of the Annals of Congress referred to in the head-note.]

MONDAY, *January* 25, 1808.

The President communicated a letter from James Taylor, requesting compensation as a witness in the case of John Smith, of Ohio; which was read.

Ordered, That it be referred to Messrs. Adams, Anderson, and Tiffin to report thereon.

(The bill passed the Senate the following day.)

TUESDAY, *March* 1, 1808.

Agreeably to the order of the day, the Senate resumed the consideration of the resolution reported by the select committee for the expulsion of John Smith, a Senator from the State of Ohio.

Mr. Smith being absent, Mr. Key attended as his counsel.

On request by Mr. Key that Mr. Harper be permitted to attend also as counsel on behalf of Mr. Smith,

A motion was made by Mr. Bradley that Mr. Harper be admitted as one of the counsel of Mr. Smith; and it passed in the affirmative.

Whereupon,

Mr. Harper attended.

The following request was submitted by Mr. Key:

"John Smith, of Ohio, by his counsel, prays the honorable Senate to grant him further time to produce his testimony and prepare for his defense."

On motion by Mr. Tiffin,

Ordered, That the papers directed to the Secretary of the Senate, and which were taken as testimony in the case of John Smith, of Ohio, be referred to a select committee, to examine and report thereon, and that Messrs. Anderson, Adams, and Tiffin be the committee.

WEDNESDAY, *March* 2, 1808.

Mr. Anderson, from the committee appointed to examine and separate the depositions transmitted in the case of John Smith, a Senator from the State of Ohio, reported that they had performed that service.

THURSDAY, *March* 3, 1808.

On motion by Mr. Adams,

Ordered, That the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr, be postponed to Tuesday, the 15th instant.

On motion by Mr. Adams,

Ordered, That the papers received by the Secretary of the Senate relating to the case of John Smith, a Senator from the State of Ohio, be subject to the inspection of his counsel.

FRIDAY, *March* 4, 1808.

The President communicated sundry letters from Elias Glover, referring to depositions inclosed, in the case of John Smith, a Senator from the State of Ohio, and the letters were read.

On motion by Mr. Gregg,

Ordered, That the counsel on behalf of John Smith, a Senator from the State of Ohio, be authorized to take copies of the depositions in the case, under the direction of the Secretary of the Senate.

TUESDAY, *March* 15, 1808.

Agreeably to the order of the day, the Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Messrs. Harper and Key, counsel for Mr. Smith, attended.

Mr. Harper read a letter from Mr. Smith, requesting further time to enable him to prepare for his defense, and requested, in Mr. Smith's behalf, an extension of the time accordingly.

Whereupon,

On motion by Mr. Hillhouse that the further consideration of the report of the committee be postponed to Monday, the 28th of March, it was determined in the negative—yeas 15, nays 17.

The yeas and nays having been required by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Adams, Bayard, Gaillard, Giles, Goodrich, Hillhouse, Howland, Mathewson, Pickering, Pope, Reed, Smith of New York, Sumter, Thruston, and White.

Those who voted in the negative are Messrs. Anderson, Bradley, Condit, Crawford, Franklin, Gilman, Gregg, Kitchel, Maclay, Milledge, Mitchill, Moore, Parker, Robinson, Smith of Maryland, Smith of Tennessee, and Turner.

On request by Mr. Key, one of the counsel in behalf of Mr. Smith, of Ohio, and on motion by Mr. Smith, of Maryland, it was agreed that the further consideration of the report of the committee be postponed until to-morrow.

[An account of the debate is found on pages 164–167 of the Annals of Congress referred to in the head-note.]

WEDNESDAY, *March* 16, 1808.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Messrs. Harper and Key, counsel on behalf of Mr. Smith, attended.

The memorial of the counsel on behalf of Mr. Smith was presented and read, praying the further hearing of this case may be postponed until the first Monday in April next, for reasons stated in the memorial; and

On motion by Mr. Bradley that the consideration of the report of the committee be postponed to the first Monday in April next, the votes of the Senate were equally divided—16 in the affirmative and 16 in the negative, and the President determined the question in the negative.

On motion by Mr. Bayard that the further consideration of the report of the committee be postponed to the 1st day of April next, it was determined in the affirmative—yeas 17, nays 15.

The yeas and nays having been required by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Adams, Bayard, Bradley, Gaillard, Giles, Goodrich, Hillhouse, Howland, Mathewson, Milledge, Pickering, Pope, Reed, Smith of New York, Sumter, Thruston, and White.

Those who voted in the negative are Messrs. Anderson, Condit, Crawford, Franklin, Gilman, Gregg, Kitchel, Maclay, Mitchill, Moore, Parker, Robinson, Smith of Maryland, Smith of Tennessee, and Turner.

[An account of the debate is found on pages 167–170 of the Annals of Congress referred to in the head-note.]

FRIDAY, *April* 1, 1808.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

On motion by Mr. Anderson,

Ordered, That Mr. Smith's counsel have seats assigned them at the bar of this House.

Mr. Harper and Mr. Key, his counsel, attended accordingly.

Mr. Key requested the attendance of Messrs. Davenport, Morrow, and Sturgis, members of the House of Representatives of the United States, to give evidence in the case; also, that a subpœna issue to General Wilkinson to attend for that purpose.

Mr. Key proceeded to read certain depositions, taken on behalf of Mr. Smith, and which were objected to as not within the rule; and,

On motion, it was agreed that the counsel on behalf of Mr. Smith should proceed in reading the depositions, the informality notwithstanding; and,

After progress,

On motion, the Senate adjourned to 10 o'clock to-morrow morning.

[An account of the debate is found on pages 178–180 of the Annals of Congress referred to in the head-note.]

SATURDAY, *April* 2, 1808.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Mr. Harper and Mr. Key, his counsel, attended.

The following motion was submitted by Mr. Milledge for consideration:

"*Resolved*, That a message be sent to the House of Representatives requesting that Messrs. Sturgis, Davenport, and Jeremiah Morrow, members of that House, be permitted to attend the Senate to give evidence as to the characters of sundry witnesses in the case of John Smith, a Senator from the State of Ohio."

The counsel for Mr. Smith proceeded in reading the depositions taken on his behalf.

After which,

On motion, it was agreed that the consideration of the report be further postponed.

[An account of the debate is found on pages 184, 185 of the Annals of Congress referred to in the head-note.]

MONDAY, *April* 4, 1808.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Mr. Smith attended, together with Messrs. Harper and Key, counsel on his behalf, who proceeded in reading their depositions.

The depositions transmitted to the Senate on behalf of Elias Glover were also read; after which it was agreed that the further consideration of the report be postponed until to-morrow.

TUESDAY, *April* 5, 1808.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Mr. Smith attended, together with Messrs. Harper and Key, counsel on his behalf, and the counsel proceeded in the further reading of their depositions.

On request of Mr. Smith, Mr. Tiffin, of the Senate, Messrs. Van Rensselaer, Jeremiah Morrow, Talmadge, Bacon, and Davenport, of the House of Representatives, were severally sworn, and gave testimony as to the credibility of sundry witnesses whose depositions were read yesterday.

Mr. Key proceeded to show cause why the report of the committee should not be adopted, after which it was agreed that the further consideration thereof be postponed until to-morrow.

[An account of the debate, with the argument of Mr. Key, is found on pages 186-207 of the Annals of Congress referred to in the head-note.]

WEDNESDAY, *April* 6, 1808.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Mr. Smith attended, together with Messrs. Harper and Key, counsel in his behalf.

On request of Mr. Smith, Messrs. Gardenier and Russell, of the House of Representatives, were severally sworn, and gave testimony as to the credibility of certain witnesses whose depositions were read on the 4th instant; and

Mr. Harper proceeded to show cause why the report of the committee should not be adopted.

After which,

On motion by Mr. Anderson, it was agreed that the consideration thereof be further postponed.

[An account of the debate, with the argument of Mr. Harper, is found on pages 208-234 of the Annals of Congress referred to in the head-note.]

THURSDAY, *April* 7, 1808.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr; and Mr. Smith attended.

On motion by Mr. Smith, of Maryland,

"*Resolved*, That the President of the United States be requested to lay before this House Matthew Nimmo's letter to him of the 28th November, 1806, and any other letter or letters of the said Nimmo relative to any supposed connection of John Smith, of Ohio,

with the conspiracy of Aaron Burr, and also the letter of the said John Smith of January, 1807, inclosing the deposition of himself and his son."

Ordered, That the Secretary lay this resolution before the President of the United States.

On motion by Mr. White, it was agreed that the further consideration of the report be postponed until to-morrow.

FRIDAY, *April* 8, 1808.

The following written message was received from the President of the United States by Mr. Coles, his secretary:

To the Senate of the United States:

Agreeably to the request of the Senate in their resolution of yesterday I have examined my papers and find no letter from Matthew Nimmo of the date of November 28, 1806, nor any other from him of any date but that of January 23, 1807, now transmitted with all the papers in my possession which accompanied it. Nor do I find any letter from John Smith, of Ohio, bearing date at any time in the month of January, 1807.

Having delivered to the Attorney-General all the papers respecting the conspiracy of Aaron Burr which came to my hands during or before his prosecution, I might suppose the letters above requested had been delivered to him. But I must add my belief that I never received such letters and the ground of it. I am in the habit of noting daily in the list kept for that purpose the letters I receive daily by the names of the writers and dates of time and place, and this has been done with such exactness that I do not recollect ever to have detected a single omission. I have carefully examined that list from the 1st of November, 1806, to the last of June, 1807, and I find no note within that period of the receipt of any letter from Matthew Nimmo but that now transmitted, nor of any one of the date of January, 1807, from John Smith, of Ohio. The letters noted as received from him within that period are dated at Washington, February 2, 2, 7, and 21, which I have examined, and find relating to subjects entirely foreign to the objects of the resolution of the 7th instant; and others dated at Cincinnati, March 27, April 6, 13, and 17, which not being now in my possession, I presume have related to Burr's conspiracy, and have been delivered to the Attorney-General. I recollect nothing of their particular contents. I must repeat, therefore, my firm belief that the letters of Nimmo of November 28, 1806, and of John Smith of January, 1807, never came to my hands, and that if such were written (and Nimmo's letter expressly mentions his of November 28) they have been intercepted, or otherwise miscarried.

TH. JEFFERSON.

APRIL 8, 1808.

The message and papers referred to were read, and

Ordered, To lie for consideration.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

On motion by Mr. Franklin, it was agreed to take up the resolution reported by the committee, as follows:

"*Resolved*, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr against the peace, union, and liberties of the people of the United States has been guilty of conduct incompatible with his duty and station as a Senator of the United States, and that he be therefor, and hereby is, expelled from the Senate of the United States."

And, after debate,

On motion by Mr. Giles, it was agreed that the further consideration thereof be postponed until to-morrow.

[An account of the debate, with the speech of Mr. Adams, is found on pages 236–265 of the Annals of Congress referred to in the head-note.]

SATURDAY, *April* 9, 1808.

Agreeably to the order of the day the Senate resumed the consideration of the resolution reported by the committee appointed on the 7th of November last to consider the subject, to wit:

"*Resolved*, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr against the peace, union, and liberties of the people of the United States has been guilty of conduct incompatible with his duty and station as a Senator of the United States, and that he be therefore, and hereby is, expelled from the Senate of the United States."

And on the question to agree to the resolution, it was determined in the negative, two-thirds of the Senators present not concurring therein—yeas 19, nays 10.

Those who voted in the affirmative are Messrs. Adams, Anderson, Condit, Crawford, Franklin, Gaillard, Gilman, Gregg, Kitchel, Maclay, Mathewson, Milledge, Moore, Robinson, Smith of Maryland, Smith of Tennessee, Sumter, Tiffin, and Turner.

Those who voted in the negative are Messrs. Giles, Goodrich, Hillhouse, Howland, Pickering, Pope, Reed, Smith of New York, Thruston, and White.

[An account of the debate, with the speech of Mr. Hillhouse, is found on pages 265-324 of the Annals of Congress referred to in the head-note.]

[Eleventh Congress—First session.]

STANLEY GRISWOLD,

Senator from Ohio from June 2 *to December* 11, 1809.

Stanley Griswold had resided in Ohio from September, 1808, till May 18, 1809, when he was appointed by the governor of that State to fill a vacancy in the United States Senate. It was determined that the term of residence or other qualifications necessary to entitle a person to become an inhabitant of the State not being defined either by the constitution or laws of the State, the certificate of the governor that a person was a citizen thereof was sufficient for the Senate to proceed upon, he being otherwise entitled thereto.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Annals of Congress, 11th Cong., 1st and 2d sess., vol. 1, 1809–'10, within pages 21–37; together with the report of the committee in the case, copied from the original on file in the office of the Secretary of the Senate.

FRIDAY, *June* 2, 1809.

Stanley Griswold, appointed a Senator by the executive of the State of Ohio to fill the vacancy occasioned by the resignation of Edward Tiffin, was qualified and took his seat.

FRIDAY, *June* 9, 1809.

Resolved, That a committee of elections be appointed.

Ordered, That Messrs. Hillhouse, Giles, Crawford, Franklin, and Robinson be the committee.

On motion by Mr. Hillhouse,

Ordered, That the credentials of Stanley Griswold, appointed a Senator by the executive of the State of Ohio, be referred to this committee.

THURSDAY, *June* 15, 1809.

Mr. Hillhouse, from the Committee of Elections, to whom were referred the credentials of Stanley Griswold, esq., appointed a Senator of the United States by the executive of the State of Ohio, made report.

Whereupon,

Resolved, That Stanley Griswold, appointed by the governor of the State of Ohio as a Senator of the United States, to fill the vacancy occasioned by the resignation of Edward Tiffin, is entitled to his seat.

REPORT OF COMMITTEE.

Mr. Hillhouse, from the Committee of Elections, to whom was referred the credentials of an appointment by the governor of the State of Ohio of Stanley Griswold as a Senator of the United States, having had the same under consideration, reported:

That Edward Tiffin, a Senator for the State of Ohio, resigned his seat since the last session of the legislature of said State, and during their recess. That on the 18th day of May last, and during said recess of said legislature, said Stanley Griswold was appointed by the governor of said State to fill the vacancy occasioned by the resignation aforesaid. That said Stanley Griswold, being a citizen of the United States, removed into the said State of Ohio and has there resided since September last, but the term of residence or other qualifications necessary to entitle a person to become an inhabitant of said State are not, so far as the committee have been able to discover, defined either by the constitution or laws of said State; but the executive who made the appointment having certified that said Stanley Griswold is a citizen of said State, the committee submit the following resolution.

[Resolution given above.]

[Thirteenth Congress—Third session.]

JESSE BLEDSOE,

Senator from Kentucky from March 4, 1813, *to December* 24, 1814.

January 20, 1815, Mr. Bledsoe addressed a letter to the President of the Senate setting forth these facts: That previous to the 24th of the December preceding he had forwarded his resignation to the governor of the State to take place on that day, to be by the governor communicated to the legislature; that he had been advised by letter that the governor had received the resignation and would hold it up in the hope of hearing from him of a change in his determination on the subject, until about the last of that month, when he (the governor) would communicate it to the legislature; that newspaper information stated that the governor had done so, and that his successor had been appointed, which latter fact he had been informed was also stated in a letter to a gentleman of the House of Representatives; that he had received no more information. Mr. Bledsoe desired to know whether, under these circumstances, he was to be considered still a member of the Senate. It was determined that the facts stated in the letter to the President of the Senate vacated Mr. Bledsoe's seat, the grounds on which the Senate proceeded not being given. It appears from the Journals of the Senate that Isham Talbot produced credentials of election to fill Mr. Bledsoe's unexpired term February 2, 1815, and took his seat on the same day.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Annals of Congress, 13th Cong., 1814–'15, vol. 3, pages 175, 176.

FRIDAY, *January* 20, 1815.

The President laid before the Senate a letter from the Hon. Mr. Bledsoe, as follows:

WASHINGTON, *January* 20, 1815.

SIR: Doubts having arisen whether I have a right still to fill my seat in the Senate of the United States, with a view to have the question settled and a precedent established, and to save my own feelings on a point of duty, I beg leave, through you, to submit the following case for the decision of that honorable body:

Previous to the 24th December last I forwarded by mail my resignation to the governor of the State of Kentucky, to take place on that day, to be by him communicated to the legislature of that State then and, so far as I am informed, still in session. I was by a letter from the governor of that State advised that he had received my resignation and would hold it up, in the hope of hearing from me and of a change in my determination on that subject, until about the last of that month, when he would communicate it to the legislature. Newspaper information states that he did so, and that my successor has been appointed, which latter fact is also stated in a letter to a gentleman of the House of Representatives, as I have been informed. This is all the information I have received. Whether, under these circumstances, I am to be considered as still a member will be for the honorable Senate to decide. Wishing it to be understood I have no other solicitude as to the result than to be informed of my duty, which is concerned in continuing in my place if I have a right to do so,

I am, with high respect, your most obedient servant,

J. BLEDSOE.

The Hon. JOHN GAILLARD,
President of the Senate.

And the letter was read.

Whereupon

Mr. Roberts submitted the following motion:

"*Resolved*, That the facts stated in the letter of the Hon. Jesse Bledsoe addressed to the President of the Senate do not vacate his seat in the Senate."

A motion was made by Mr. King to amend the resolution by striking out therefrom the word "not;" and it was determined in the affirmative—yeas 25, nays 8; as follows:

YEAS—Messrs. Anderson, Barbour, Brown, Chace, Daggett, Fromentin, Gaillard, German, Giles, Goldsborough, Gore, Horsey, Howell, Hunter, Kerr, King, Lambert, Mason, Morrow, Robinson, Tait, Taylor, Thompson, Wells, and Wharton.

NAYS—Messrs. Bibb, Condit, Dana, Lacock, Roberts, Smith, Turner, and Varnum.

On the question, Shall the resolution pass as amended? it was determined in the affirmative—yeas 27, nays 6; as follows:

YEAS—Messrs. Anderson, Barbour, Brown, Chace, Daggett, Fromentin, Gaillard, German, Giles, Goldsborough, Gore, Horsey, Howell, Hunter, Kerr, King, Lacock, Lambert, Mason, Morrow, Robinson, Tait, Taylor, Thompson, Turner, Wells, and Wharton.

NAYS—Messrs. Bibb, Condit, Dana, Roberts, Smith, and Varnum.

So it was

Resolved, That the facts stated in the letter of the Hon. Jesse Bledsoe addressed to the President of the Senate do *vacate his seat in the Senate.*

[Twentieth Congress—First session.]

EPHRAIM BATEMAN,

Senator from New Jersey from December 7, 1826, till January 12, 1829, when he resigned.

Mr. Bateman's first term expired March 3, 1827. February 26, 1827, his credentials of election for the succeeding term were presented to the Senate. February 28, 1827, a remonstrance of a number of members of the general assembly of the State against the legality of the election was communicated to the Senate and ordered to lie on the table. December 3, 1827, Mr. Bateman took his seat. May 6, 1828, the remonstrance was referred to a select committee of five. It was to the effect that the election ought to be declared null and void for the reason that Mr. Bateman, being chairman of the joint meeting of the two houses of the legislature, had voted for himself. It stated that Theodore Frelinghuysen had 28 votes and Mr. Bateman 29, and claimed that Mr. Bateman was elected "by *his own* vote, without which he neither could nor would have been elected," and that it was "repugnant to the fundamental principles of our free institutions that the same man, at the same time, should be both *candidate* and *elector*." May 22, the committee reported the facts in regard to the election to be as stated in the remonstrance. On a preliminary point discussed, it reported that the Senate was "empowered by the Constitution to judge of the *elections*, *returns*, and qualifications of its members, and could not therefore be precluded by the commission emanating from the executive of a State from any inquiry which is necessary to the exercise of that judgment." On the chief point before the committee it reported that Mr. Bateman "was a member of the legislature of New Jersey, duly elected, and competent to the exercise of every legislative power not forbidden by its laws, among which the right to vote in the election of a Senator was one." The committee recommended the adoption of a resolution discharging the committee from the further consideration of the subject, which was agreed to.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journals, 2d sess. 19th Cong., 1826-'27, and 1st sess. 20th Cong., 1827-'28, with the report of the committee from Senate Documents, 1st sess. 20th Cong., vol. 5, Doc. No. 202, pages 1-3.

The documents relating to the case which were printed are found in the volume of Senate Documents above referred to, Doc. No. 202, pages 4-21. It appears from Niles' Register, vol. 34, page 223, that some debate on the subject occurred, in which Messrs. Bateman, Van Buren, and Noble took part; but it is not there reported, nor is it found in the Congressional Debates.

MONDAY, *February* 26, 1827.

Mr. Dickerson communicated the credentials of the Hon. Ephraim Bateman, appointed a Senator by the legislature of the State of New Jersey for the term of six years, to commence on the 4th day of March next.

WEDNESDAY, *February* 28, 1827.

The Vice-President communicated a letter from Samuel J. Bayard, James S. Green, and John R. Thompson, inclosing the remonstrances of a number of the members of the legislative council and general assembly of New Jersey and of a number of citizens of that State against the legality of the election by the legislature of Ephraim Bateman to the Senate of the United States from the 3d of March next; and

Ordered, That it lie on the table.

MONDAY, *December* 3, 1827.

The Hon. Ephraim Bateman, appointed a Senator by the legislature of the State of New Jersey for the term of six years commencing on the 4th day of March last, attended, and the oath prescribed by law was administered to him and he took his seat in the Senate.

TUESDAY, *May* 6, 1828.

On motion by Mr. Eaton,

Resolved, That the remonstrance presented to the Senate at the last session against the legality of the election by the legislature of New Jersey of Ephraim Bateman to the Senate of the United States be referred to a select committee, to consist of five members, to consider and report thereon.

Ordered, That Mr. Berrien, Mr. Tazewell, Mr. McLane, Mr. Seymore, and Mr. Sanford be the committee.

Mr. Bateman presented his answer to the remonstrance against his election; and

Ordered, That it be referred to the last-mentioned committee.

Mr. Eaton laid on the table two papers relating to the subject of said remonstrance; and

Ordered, That they be referred to the last-mentioned committee.

THURSDAY, *May* 22, 1828.

Mr. Berrien, from the select committee to whom was referred the memorial of sundry citizens of New Jersey touching the election of Ephraim Bateman, a Senator from that State, made a report, accompanied by a request to be discharged from the further consideration of the subject; and the committee was discharged accordingly.

On motion by Mr. Eaton,

Ordered, That the report and the documents connected with it be printed.

REPORT OF COMMITTEE.

IN SENATE OF THE UNITED STATES.

MAY 22, 1828.

Mr. Berrien made the following report:

The select committee to whom was referred the memorial of sundry citizens of New Jersey touching the election of Ephraim Bateman, a Senator from that State, report:

That, by a reference to the proceedings of the legislature of New Jersey, assembled in joint meeting on the 9th November, 1826, of which a duly certified copy has been exhibited by the memorialists, it appears that an election for a Senator, to represent the said State of New Jersey in the Congress of the United States for six years from the 4th day of March then next ensuing, was on that day held; that Theodore Frelinghuysen, Ephraim Bateman, Thomas Chapman, and George K. Drake were put in nomination for the said appointment; that Ephraim Bateman was at that time a member of the said legislature of New Jersey, vice-president of the council and chairman of the joint meeting; that the names of Thomas Chapman and George K. Drake were with leave respectively withdrawn; that the said Ephraim Bateman thereafter withdrew from the chair of the joint meeting, and at his instance William B. Ewing, esq., was called to the same; and, on motion, the same was confirmed by the joint meeting; that, after some discussion as to the manner of proceeding, the said Ephraim Bateman returned to the assembly room and resumed the chair; that the secretary was thereupon directed to call the joint meeting, which being done, the members voting *viva voce*, it appeared that there were for Theodore Frelinghuysen 28 votes and for Ephraim Bateman 29 votes, and that the said Ephraim Bateman voted for himself, and was accordingly declared to be duly appointed.

It moreover appears to the committee that in virtue of such election, and the commission of the governor of New Jersey founded thereon, the said Ephraim Bateman now holds his seat in the Senate of the United States.

The memorialists object to the validity of this election, because the said Ephraim Bateman, being a member of the legislative council, vice-president of the State, and chairman of the joint meeting of the two houses of the legislature, permitted himself to be nominated as a candidate for the office of Senator in Congress of the United States; that he presided as chairman of the joint meeting during the said election; that, before the vote was taken, he made a motion that he should be excused from voting, because he was a candidate, and therefore interested; and, on the question being put on his said motion, voted that he should not be excused, the other members of the joint meeting being equally divided on the same; and that, on the vote for Senator for six years, the joint meeting, without the vote of the said Ephraim Bateman, being again equally divided, he, the said Ephraim Bateman, voted for himself.

The transcript of the proceedings of the legislature of New Jersey, which has been exhibited to the committee, does not show what motions were made and decided before the joint meeting proceeded to the election of a Senator; but it does show that on proceeding to that election, the votes of the joint meeting were for Theodore Frelinghuysen 28 and for Ephraim Bateman 29, and that Ephraim Bateman voted for himself. The question, therefore, which is presented to the consideration of the committee is whether this act invalidates the election.

On the preliminary point which is discussed in the argument forwarded in behalf of the memorialists, as well as in that submitted by the respondent, and which relates to the right of the Senate to look behind the commission granted by the governor, the committee cannot permit themselves to entertain a doubt.

The Senate is empowered by the Constitution to judge of the *elections*, *returns*, and qualifications of its members, and cannot therefore be precluded by the commission emanating from the executive of a State from any inquiry which is necessary to the exercise of that judgment. If this were not so, the governor of a State, by an abuse of his trust, either from misapprehension or design, might assume to himself the appointing power in exclusion of the legislature.

The question whether the election of the respondent is invalidated by the fact that he voted for himself, and that without such vote he had not a majority of the votes of the

joint meeting by which he was declared to be elected, is then forced upon the attention of the committee.

The following clauses of the Constitution of the United States relate to the *manner* of election:

"The Senate of the United States shall be composed of two Senators from each State, who *shall be chosen by the legislature thereof.*"

"The times, places, and *manner* of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

The legislature of New Jersey has enacted the following provision:

"Senators of the United States on the part of this State shall be appointed by the council and general assembly, in joint meeting assembled, at the place where the legislature shall then sit."

It is manifest from the aforegoing clauses that Congress may prescribe the *mode* of electing Senators, and that in the absence of any provision by them it is competent to the legislatures of the several States to do so. It seems equally clear that each State must possess the power of defining by its organic law the constituents of its own legislative department, of prescribing the qualifications of its members, and the limitations under which the trust confided to them shall be exercised; and that the interest of a member in any subject of legislative action may be declared to constitute, as to that subject, a ground of disqualification to the exercise of his legislative functions by such interested member. But no such provision exists. For aught that appears to the committee the respondent was a member of the legislature of New Jersey duly elected and competent to the exercise of every legislative power not forbidden by its laws, among which the right to vote in the election of a Senator was one. The committee have not considered the question of the propriety or delicacy of the act complained of by the memorialists as coming within the scope of the reference made to them by the Senate. Nor have they felt themselves at liberty to apply to this question any abstract principles of right or of that system of jurisprudence which, however its principles may have become intermingled with our statutory regulations or its rules of proceeding may be seen to operate in the forms which are in use in our judicial tribunals, has no intrinsic validity in those tribunals or in any other forum in the United States.

Contenting themselves with this brief view of the subject, it appears to the committee that the facts set forth in the memorial referred to them are not sufficient to invalidate the election of Ephraim Bateman as a Senator of the State of New Jersey in the Congress of the United States, under the election had in the joint meeting of the assembly of that State on the 9th day of November, 1826. They therefore recommend the following resolution:

Resolved, That the select committee raised on the remonstrance and petition of sundry citizens of the State of New Jersey be discharged from the further consideration of the same.

[Twenty-third Congress—First session.]

ELISHA R. POTTER vs. ASHER ROBBINS,

of Rhode Island.

February 4, 1833, Mr. Knight, of Rhode Island, presented in the Senate the credentials of Asher Robbins, elected a Senator from Rhode Island for the term beginning March 4, 1833, which were read. Mr. Robbins had been elected January 19, 1833; his credentials dated January 28, 1833. December 2, 1833, the first day of the first meeting of Congress in said term, the President of the Senate communicated an act of the State of Rhode Island declaring the election of January 19 void; also credentials of election to the Senate of Elisha R. Potter for the said term. The act had passed in October, 1833. Mr. Potter had been elected November 1, 1833; his credentials dated November 5, 1833. After debate on the question whether Mr. Robbins should be admitted at once to the seat to hold until the Senate should have decided to which of the contestants it belonged, it was determined that Mr. Robbins be admitted to take the oath, which he did December 2, 1833, and the credentials of Mr. Potter were laid on the table. December 5, 1833, the credentials of Mr. Potter were referred to a select committee of five elected by the Senate; and December 9 the credentials of Mr. Robbins were referred to the same committee. Majority and minority reports were made by the committee. The majority reported that the body electing Mr. Robbins was the legislature of Rhode Island; also a resolution "that Asher Robbins, being duly and constitutionally chosen a Senator in Congress from the State of Rhode Island, is entitled to his seat in the Senate," which resolution passed in the affirmative May 27, 1834, by a vote of 27 yeas to 16 nays. The minority reported that the choice of Mr. Robbins was not made by the legislature of the State; that the terms of the governor and senators forming part of that body had expired in May, 1832, before the election of Mr. Robbins; that there had been no new election by the people; and that the act passed in January, 1832, by the legislature, providing that in case of a failure at any annual election by the people of the election of a governor, lieutenant-governor, or a quorum of the Senate, such of those officers who should then be incumbents should continue in office until their successors should be duly qualified, under which act the governor and senators referred to were holding office at the time of the election, was in violation of the charter granted to the State in 1633, and was null and void; and report that Mr. Potter was duly elected.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journal, 1st sess. 23d Cong., 1833-34; the majority report (Report No. 139, Senate Documents, 1st sess. 23d Cong., vol. 2, 1833-'34); and the minority report (Report No. 246, Senate Documents, 1st sess. 23d Cong., vol. 3, 1833-'34), with the exception of certain accompanying documents, which may be found in the volume of Senate Documents containing the report.

The debate on the *prima facie* right of Mr. Robbins to the seat is found in Congressional Debates, vol. 10, part 1, 1833-'34, pages 2-11. A debate on the right of the minority to make report, and on the question whether a minority report should be responsive to the majority report, is found in the same volume, pages 804-807, 1229, 1230, 1252-1257. Special references to the other debates are inserted below. The vote on agreeing to the resolution reported by the committee was taken without debate.

The references here given are all either to the Senate Journal or to the Congressional Debates (Gales & Seaton). The case is also reported in the Congressional Globe and the Register of Debates (Green).

MONDAY, *February* 4, 1833.

Mr. Knight communicated the credentials of the Hon. Asher Robbins, appointed a Senator by the legislature of the State of Rhode Island and Providence Plantations for the term of six years, to commence on the 4th day of March next; which were read.

MONDAY, *December* 2, 1833.

The President communicated an act of the general assembly of the State of Rhode Island and Providence Plantations, declaring void the election by the general assembly of that State, on the 19th of January last, of Asher Robbins to the office of Senator to represent that State in the Senate of the United States for the term of six years from the 3d day of March last; and the certificate of the governor and secretary of that State of the election, by the said general assembly, of Elisha R. Potter to the same office; which act and certificate were read; and,

On motion by Mr. Poindexter,

Ordered, That they be laid on the table.

On motion by Mr. Poindexter that the oath prescribed by law be now administered to Mr. Robbins, whose credentials were received at the last session,

A motion was made by Mr. Benton that said motion be referred to a select committee to consider and report thereon.

It was determined in the negative—yeas 15, nays 19.

[A reference to the debate that took place on the two last motions is given in the head-note, it being pages 2-11 of the references.]

On motion by Mr. Benton, the yeas and nays being desired by one-fifth of the members present,

Those who voted in the affirmative are Messrs. Benton, Brown, Grundy, Hill, Kane, King of Alabama, Morris, Rives, Robinson, Shepley, Tallmadge, Tipton, White, Wilkins, and Wright.

Those who voted in the negative are Messrs. Bell, Bibb, Chambers, Clay, Ewing, Frelinghuysen, Hendricks, Kent, Knight, Mangum, Moore, Naudain, Poindexter, Prentiss, Silsbee, Smith, Swift, Tomlinson, and Tyler.

The question recurring on the motion by Mr. Poindexter, "that the oath prescribed by law be administered to Mr. Robbins," it was determined in the affirmative; and the oath was accordingly administered to Mr. Robbins and he took his seat in the Senate.

WEDNESDAY, *December* 4, 1833.

On motion by Mr. Wright that the proceedings of the legislature of the State of Rhode Island, now upon the table of the Senate, showing the appointment of Elisha R. Potter as a Senator to represent that State in the Senate of the United States, be referred to a select committee of five members, to inquire and report upon the claim of the said Elisha R. Potter to the seat in the Senate now occupied by the Hon. Asher Robbins; and,

On motion by Mr. Clay,

Ordered, That the said motion be laid on the table.

[On Mr. Wright's motion was a brief debate on the method of appointment of select committees, which is found on pages 13, 14 of the volume of Congressional Debates above referred to.]

THURSDAY, *December* 5, 1833.

On motion of Mr. Wright the Senate resumed the consideration of the motion submitted by him yesterday, to refer to a select committee the claim of Elisha R. Potter to a seat in the Senate; and it was amended and agreed to, as follows:

"*Resolved*, That the proceedings of the legislature of the State of Rhode Island, now upon the table of the Senate, showing the appointment of Elisha R. Potter as a Senator to represent that State in the Senate of the United States, be referred to a select committee, *to be elected by the Senate*, to inquire and report upon the claim of the said Elisha R. Potter to the seat in the Senate now occupied by the Hon. Asher Robbins."

Ordered, That Mr. Poindexter, Mr. Rives, Mr. Frelinghuysen, Mr. Wright, and Mr. Sprague be the committee.

[Some remarks made on this motion of Mr. Wright are found on page 19 of the volume of Congressional Debates above referred to.]

MONDAY, *December* 9, 1833.

On motion by Mr. Poindexter,

Ordered, That the credentials of Mr. Robbins be referred to the select committee appointed on the claim of Elisha R. Potter to a seat in the Senate.

TUESDAY, *March* 4, 1834.

Mr. Poindexter, from the select committee to whom had been referred the credentials of Asher Robbins, appointed a Senator in Congress from the State of Rhode Island for the term of six years, to commence on the 4th day of March, 1833, and the proceedings of the legislature of said State, convened on the last Monday of October, 1833, declaring void the appointment of said Robbins, and the appointment of Elisha R. Potter for the said term, made a report,* accompanied by the following resolution:

"*Resolved*, That Asher Robbins, being duly and constitutionally chosen a Senator in Congress from the State of Rhode Island, is entitled to his seat in the Senate."

[Here followed a debate on the right of the minority of the committee to submit a report, a reference to which is given in the head-note, it being pages 804–807 of the references.]

TUESDAY, *April* 1, 1834.

On motion by Mr. Wright that he have leave to present to the Senate a paper containing the views and opinions of the minority of the select committee to whom had been referred the appointments of Asher Robbins and Elisha R. Potter, by the State of Rhode Island, to the Senate of the United States.

[A reference to the debate on this motion is given in the head-note, it being pages 1229, 1230 of the references.]

On motion by Mr. Ewing,

Ordered, That it be laid on the table.

FRIDAY, *April* 4, 1834.

On motion by Mr. Wright, the Senate resumed the consideration of his motion to present to the Senate a paper containing the views and opinions of the minority of the select committee to whom had been referred the appointments of Asher Robbins and Elisha R. Potter by the legislature of Rhode Island to the Senate of the United States; and,

* Found on page 102.

On motion of Mr. Forsyth,

Ordered, That it be laid on the table, and that the said paper, with the documents therein referred to, except those marked G, H, and I, be printed.

[A reference to the debate following Mr. Wright's motion is given in the head-note, it being pages 1252–1257 of the references.]

[The consideration of the report was successively postponed April 10, May 8, May 12, and May 19.]

TUESDAY, *May* 27, 1834.

The Senate resumed the consideration of the report of the select committee on the respective claims of Messrs. Robbins and Potter to a seat in the Senate; and, on the question to concur in the resolution with which it concludes, as follows:

"*Resolved*, That Asher Robbins, being duly and constitutionally chosen a Senator in Congress from the State of Rhode Island, is entitled to his seat in the Senate,"

It was determined in the affirmative—yeas 27, nays 16.

On motion of Mr. Wright, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs Bell, Bibb, Calhoun, Chambers, Clay, Clayton, Ewing, Frelinghuysen, Hendricks, Kent, Knight, Leigh, McKean, Mangum, Naudain, Poindexter, Porter, Preston, Silsbee, Smith, Southard, Sprague, Swift, Tipton, Tomlinson, Waggaman, and Webster.

Those who voted in the negative are Messrs. Benton, Brown, Forsyth, Grundy, Hill, Kane, King of Alabama, King of Georgia, Linn, Morris, Robinson, Shepley, Tallmadge, White, Wilkins, and Wright.

[Some remarks on the question of proceeding to a vote without debate are found in the Congressional Debates, vol. 10, part 2, 1833–'34, page 1813.]

COMPENSATION OF MR. POTTER.

THURSDAY, *June* 5, 1834.

The following motion, submitted by Mr. Wright, was considered and agreed to:

"*Resolved*, That the Committee on Finance be instructed to inquire into the justice and expediency of providing by law for the pay and mileage of the Hon. Elisha R. Potter from the commencement of the present session of Congress up to the time of the final decision of the contest for a seat in the Senate between the said Potter and the Hon. Asher Robbins, at the rate of pay allowed to the members of the Senate."

TUESDAY, *June* 10, 1834.

On motion of Mr. Webster,

Ordered, That the Committee on Finance be discharged from the consideration of the resolution relating to the claim of Elisha R. Potter for mileage and compensation.

FRIDAY, *June* 12, 1834.

The following motion submitted by Mr. Wright was considered:

"Whereas the Hon. Elisha R. Potter did at the commencement of the present session of Congress cause to be laid before the Senate a commission from the governor of the State of Rhode Island, duly authenticated, and constituting the regular *prima facie* evidence to entitle him to a seat in the Senate; and

"Whereas the contest for the seat claimed by Mr. Potter was not finally decided by the Senate until the 27th day of May now last past, when the said seat was awarded to the Hon. Asher Robbins: Therefore,

"*Resolved*, That the said Elisha R. Potter is entitled to the compensation of mileage allowed by law to members of Congress for his travel from his place of residence, in the State of Rhode Island, to the capital, and returning; and also to the per diem allowance of a member of Congress for the time he actually attended at the city of Washington during the contest pending before the Senate in relation to the seat claimed by him and occupied by the Hon. Mr. Robbins."

On motion of Mr. Wright,

Ordered, That it be postponed until to-morrow.

MONDAY, *June* 16, 1834.

The Senate resumed the consideration of the motion submitted by Mr. Wright on the 12th instant, to compensate Elisha R. Potter for mileage and per diem to the 27th ultimo; and

Ordered, That it be referred to the Committee on the Judiciary.

[Some remarks on the resolution are *found in* part 2 of the Congressional Debates already referred *to, page 2021.*]

THURSDAY, *June* 19, 1834.

On motion of Mr. Clayton,

Ordered, That the Committee on the Judiciary be discharged from the consideration of the resolution to compensate Elisha R. Potter for mileage and attendance to the 27th ultimo.

The Senate then proceeded to consider said resolution, and it was amended to read as follows:

"Whereas the Hon. Elisha R. Potter did at the commencement of the present session of Congress cause to be laid before the Senate *credentials authenticated by the governor of the State of Rhode Island declaring the election of Asher Robbins void, and that said Potter had been elected by the legislature a Senator from the State of Rhode Island;* and

"Whereas the contest for the seat claimed by Mr. Potter was not finally decided by the Senate until the 27th day of May now last past, when the said seat was awarded to the Hon. Asher Robbins: Therefore,

"*Resolved*, That the said Elisha R. Potter *ought, under the circumstances of the case, to be paid* the compensation of mileage allowed by law to members of Congress for his travel from his place of residence in the State of Rhode Island to the Capitol, and returning; and also the per diem allowance of a member of Congress for the time he actually attended at the city of Washington during the contest pending before the Senate in relation to the seat claimed by him, and occupied by the Hon. Mr. Robbins; *and that the Judiciary Committee be instructed to prepare a bill or resolution for that purpose.*"

On the question to agree to the resolution as amended, it was determined in the affirmative—yeas 24, nays 22.

On motion by Mr. Wright, the yeas and nays being desired by one-fifth of the members present,

Those who voted in the affirmative are Messrs. Benton, Bibb, Brown, Chambers, Grundy, Hendricks, Hill, Kane, King of Alabama, Knight, Linn, McKean, Moore, Morris, Preston, Robinson, Shepley, Silsbee, Tallmadge, Tyler, Waggaman, White, Wilkins, and Wright.

Those who voted in the negative are Messrs. Bell, Black, Clay, Clayton, Ewing, Forsyth, Frelinghuysen, Kent, King of Georgia, Leigh, Mangum, Naudain, Poindexter, Porter, Prentiss, Smith, Southard, Sprague, Swift, Tipton, Tomlinson, and Webster.

[Some remarks on the resolution are found in part 2 of the Congressional Debates already referred to, pages 2037, 2038.]

MONDAY, *June* 23, 1834.

[The Senate having under consideration the bill entitled "An act making appropriations for the civil and diplomatic expenses of Government for the year 1834."]

Pursuant to instruction of a majority of the Committee on the Judiciary,

Mr. Clayton moved further to amend the bill by inserting the following section:

"SEC. 4. *And be it further enacted*, That the Secretary of the Senate be, and he hereby is, directed to pay, out of the fund appropriated by law for the pay of members of Congress, to Elisha R. Potter, of the State of Rhode Island, such compensation as is allowed by law to members of Congress, for his travel from his place of residence to the city of Washington to claim a seat in the Senate, and for his return; and also the per diem compensation for the days he was in actual attendance at the seat of Government from the commencement of the present session of Congress until the final decision of the Senate against his right to the seat claimed by him."

It was determined in the affirmative—yeas 20, nays 19.

On motion of Mr. Clayton, the yeas and nays being desired by one-fifth of the members present,

Those who voted in the affirmative are Messrs. Benton, Bibb, Brown, Chambers, Grundy, Hendricks, Hill, Kane, King of Alabama, Knight, Linn, Preston, Robinson, Shepley, Silsbee, Tallmadge, Tyler, White, Wilkins, and Wright.

Those who voted in the negative are Messrs. Black, Clay, Clayton, Ewing, Forsyth, Frelinghuysen, Kent, King of Georgia, Leigh, Mangum, Naudain, Poindexter, Porter, Prentiss, Smith, Southard, Sprague, Tomlinson, and Webster.

REPORT OF COMMITTEE.

IN THE SENATE OF THE UNITED STATES.

MARCH 4, 1834.—Ordered to be printed.

Mr. Poindexter made the following report:

The select committee to which was referred the credentials of Asher Robbins, chosen a Senator in Congress from the State of Rhode Island for the term of six years, to commence on the 4th day of March, 1833; and also the proceedings of the legislature of

said State, convened on the last Monday of October, 1833, declaring the election of the said Asher Robbins void, who thereupon proceeded to elect Elisha R. Potter a Senator in Congress for six years, to commence on the 4th day of March, 1833, instead of said Asher Robbins, whose election to fill said office had been declared void as aforesaid, have had the whole subject so referred to them under their serious and attentive consideration, and submit the following report:

That it appears by the credentials of Asher Robbins and the proceedings of the general assembly of the State of Rhode Island hereto appended, and marked A, that the senate and house of representatives of said State, then sitting in the city of Providence, met in grand committee in conformity to the usage of the legislature in such cases, for the purpose of choosing a Senator to represent said State in the Congress of the United States; and that, on counting the ballots, it appeared that Mr. Robbins was elected by a majority of four votes, who was thereupon declared to be duly elected a Senator to represent said State in the Congress of the United States for six years from and after the 4th day of March then next following; that, having performed the duty for which the two houses had met, the grand committee was dissolved, and the members of each house repaired to their respective chambers. It further appears to your committee that on the 28th day of the same month of January his excellency Lemuel H. Arnold, governor of the State of Rhode Island, by commission in due form, bearing his signature, under the great seal of the State, did proclaim and make known the election of the said Asher Robbins as aforesaid, and caused the said commission, signed and sealed as aforesaid, to be delivered to the said Asher Robbins, which was presented to the Senate of the United States in open session on the 4th day of February, 1833, and on motion read and entered on the journals of the Senate. By virtue of the force and effect of the aforesaid commission, the said Asher Robbins, Senator-elect from the State of Rhode Island, appeared in the Senate Chamber on the 2d day of December, 1833, was duly sworn to support the Constitution of the United States, and took his seat as a member of the Senate.

It further appears to your committee that at a subsequent session of the general assembly of Rhode Island, begun and held at the town of South Kingston in said State, on the last Monday of October, 1833, certain proceedings were had relative to the election of the said Asher Robbins as above mentioned, which resulted in the adoption of a declaration or act of the said general assembly, by which the election of Mr. Robbins is declared to be "null and void and of no effect," and the office vacated. Whereupon, at the same session of the general assembly the two houses met in grand committee on the 1st day of November, 1833, and proceeded to elect a Senator to represent the State of Rhode Island in the Congress of the United States for the term of six years, commencing on the 4th day of March preceding, to supply the vacancy created, or supposed to be created, by the act declaring the election of Mr. Robbins null and void; and the majority appearing to be in favor of Elisha R. Potter, the said Potter was thereupon declared to be duly elected a Senator in Congress from the said State for the term aforesaid, when the grand committee was dissolved and the members repaired to their respective chambers. That on the 5th day of the same month of November his excellency John Brown Francis, governor of the State of Rhode Island, by commission in due form, bearing his signature, under the great seal of the State, did proclaim and make known the election of the said Elisha R. Potter as aforesaid, and cause the said commission, signed and sealed as aforesaid, to be delivered to the said Elisha R. Potter, which was presented to the Senate on the 2d day of December last, and on the 5th day of the same month referred to this committee. The documents relating to those proceedings are subjoined and marked B. This statement of the case is deemed sufficient to show the questions which arise for the consideration of your committee, and which they now proceed to examine:

1. Was the commission of Asher Robbins made and executed in conformity with the provisions of the Constitution of the United States, and the laws and usages of Rhode Island prescribing the time, place, and manner of choosing Senators to Congress?

2. Was Mr. Robbins, at the time of his election, eligible, according to the Constitution of the United States, to the office of Senator?

3. Was he chosen by the *legislature* of the State of Rhode Island?

If these questions be answered affirmatively it will be unnecessary to inquire into the validity of the subsequent election of Mr. Potter, or into the power of the legislature to create a vacancy by annulling the act of their predecessors; and therefore your committee limit the views which they deem it proper to take of the subject referred to them to the objections made to the commission of Mr. Robbins on the ground that the legislature by whom he was chosen had no power to elect a Senator to Congress, and that the governor who signed and sealed his commission was not at the time competent to exercise any power or perform any duty in his official character. These objections rest on the same general principle; and if they are supported by the facts disclosed in the case, connected with the constitution and laws of the State, it will *then* be proper to examine the claims of Mr. Potter to a seat in the Senate, and not otherwise.

The Constitution of the United States provides that "each house shall be the judge of the elections, returns, and qualifications of its own members." (Article 1, section 5.)

The members of the House of Representatives are to be chosen by the people of the several States having the qualifications requisite for electors of the most numerous branch of the State legislature. The members of the Senate are to be chosen by the legislatures of each State, and the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators. Congress having passed no law on the subject, we must look into the statutes of the several States for those regulations and conform our action to them. The Senators from each State are equal in number, and cannot be increased or diminished even by an amendment of the Constitution without the consent of the States respectively. They are chosen by the States as political sovereignties, without regard to their representative population, and form the Federal branch of the National Legislature. The same body of men which possesses the powers of legislation in each State is alone competent to appoint Senators to Congress for the term prescribed in the Constitution. In the performance of this duty the State acts in its highest sovereign capacity, and the causes which would render the election of a Senator void must be such as would destroy the validity of all laws enacted by the body by which the Senator was chosen. Other causes might exist to render the election *voidable*, and these are enumerated in the Constitution, beyond which the Senate cannot interpose its authority to disturb or control the sovereign powers of the States vested in their legislatures by the Constitution of the United States. We might inquire, was the person elected thirty years of age at the time of his election? Had he been nine years a citizen of the United States? Was he at the time of his election a citizen of the State for which he shall have been chosen? Was the election held at the time and place directed by the laws of the State? These are facts capable of clear demonstration by proofs, and in the absence of the requisite qualifications in either of the specified cases, or if the existing laws of the State regulating the time and place for holding the election were violated, the Senate, acting under the power to judge of "the elections, returns, and qualifications of its own members," might adjudge the commission of the person elected void, although in all other respects it was legal and constitutional. But where the sovereign will of the State is made known through its legislature, and consummated by its proper official functionaries in due form, it would be a dangerous exertion of power to look behind the commission for defects in the component parts of the legislature, or into the peculiar organization of the body for reasons to justify the Senate in declaring its acts absolutely null and void. Such a power, if carried to its legitimate extent, would subject the entire scope of State legislation to be overruled by our decision, and even the right of suffrage of individual members of the legislature whose elections were contested might be set aside. It would also lead to investigations into the motives of members in casting their votes, for the purpose of establishing a charge of bribery or corruption in particular cases. These matters, your committee think, properly belong to the tribunals of the State, and cannot constitute the basis on which the Senate could, without an infringement of State sovereignty, claim the right to declare the election of a Senator void who possessed the requisite qualifications and was chosen according to the forms of law and the Constitution.

These general views are offered to show that contested elections in the popular branch of Congress, where the people exert in their primary capacity the right of suffrage under various limitations and restrictions in the choice of Representatives from certain prescribed districts, open a much wider field of inquiry and investigation than a like contest for a seat in the Senate, which is a body wholly federative in its character and organization and whose members hold their appointments from and represent the States as political sovereignties. Your committee having regard to these rules as applicable to all contested elections in the Senate, proceed to apply them to the case now under consideration.

It is admitted that the sitting member, Asher Robbins, possesses all the qualifications required by the Constitution of the United States to be a Senator in Congress, and that his commission as such is in due form according to the laws and usages of Rhode Island. These points being conceded, the remaining and the only question to be decided is, was the body by which he was chosen a Senator the *legislature* of Rhode Island? or was it merely an assemblage of citizens without authority to pass laws prescribing that which is right and prohibiting that which is wrong to the people of the State? On this ground both parties seem content to rest their claims to a seat in the Senate.

The general assembly of Rhode Island, as at present organized, consists of two separate and distinct branches: The senate, over which body the governor presides, and the house of representatives—each chosen by the people of the State who are freemen or freeholders and entitled to vote at elections. The governor and senate are elected annually; the members of the house of representatives, semi-annually. To constitute a

legislature capable of enacting laws or performing any other duty confided to that body by the constitution of the State or of the United States it is essential that there should be in existence at the same time a governor or some officer authorized to perform the executive functions, a senate, and a house of representatives. In the absence of either the other branches could not perform any act which would be obligatory on the people of the State. We are then brought to the inquiry whether these component parts of the legislature of Rhode Island were assembled at Providence in January, 1833, when Mr. Robbins was elected in grand committee a Senator to Congress? It is alleged on the one hand that the governor and senate had ceased to exist in the month of May, 1832, by the expiration of the term of one year for which they had been elected and the failure of the people to elect their successors by a majority of all the votes given in, according to the constitution and laws of the State. On the other, it is maintained that the powers of the governor and senate were by law extended until their successors should be duly chosen and engaged, for which purpose special elections were ordered and held, but without success, prior to the time at which Mr. Robbins was elected. For the purpose of forming a correct judgment of this anomaly in the constitution of the State it is necessary to recur to the ancient charter of Charles II, of England, granted to the colony of Rhode Island and Providence Plantations in 1663, which has not been superseded by a written constitution since the Revolution, and to the various laws which have been enacted modifying the provisions of that charter in such manner as to adapt it to the condition and convenience of the people of the State. By the charter certain political powers, rights, and privileges are granted to the inhabitants of the colony, among which are the following:

"And further, we will and ordain, and by these presents, for us, our heirs and successors, do declare and appoint that, for the better ordering and managing of the affairs of the said company and their successors, there shall be one governor, one deputy governor, and ten assistants, to be from time to time constituted, elected, and chosen, out of the freemen of the said company for the time being, in such manner and form as is hereafter in these presents expressed; which said officers shall apply themselves to take care for the best disposing and ordering of the general business and affairs of and concerning the lands and hereditaments hereinafter mentioned to be granted, and the plantation thereof, and the government of the people there."—*Charter of R. I.*, page 6, *Digest* 1822.

"And that forever hereafter, twice in every year, that is to say, on every first Wednesday in the month of May, and on every last Wednesday in October, or oftener in case it shall be requisite, the assistants, and such of the freemen of the said company, not exceeding six persons for Newport, four persons for each of the respective towns of Providence, Portsmouth, and Warwick, and two persons for each other place, town, or city, who shall be from time to time thereunto elected or deputed by the major part of the freemen of the respective towns or places for which they shall be so elected or deputed, shall have a general meeting or assembly, then and there to consult, advise, and determine in and about the affairs and business of the said company and plantations. And further, we do, of our especial grace, certain knowledge, and mere motion, give and grant, unto the said governor and company of the English colony of Rhode Island and Providence Plantations in New England, in America, and their successors, that the governor, or, in his absence, and by his permission, the deputy governor of the said company for the time being, the assistants, and such of the freemen of the said company as shall be so as aforesaid elected or deputed, or so many of them as shall be present at such meeting or assembly as aforesaid, shall be called the general assembly; and that they, or the greatest part of them then present, whereof the governor or deputy governor and six of the assistants, at least to be seven, shall have, and hereby have, given and granted unto them full power and authority from time to time, and at all times hereafter, to appoint, alter, and change such days, times, and places of meeting and general assembly as they shall think fit, &c." * * *

"And from time to time to make, ordain, constitute, or repeal such laws, statutes, orders, and ordinances, forms and ceremonies of government and magistracy, as to them shall seem meet for the good and welfare of the said company, and for the government and ordering of the lands and hereditaments hereinafter mentioned to be granted, and of the people that do, or at any time hereafter shall, inhabit or be within the same, so as such laws, ordinances, and constitutions so made be not contrary and repugnant unto, but as near as may be agreeable to the laws of this our realm of England, considering the nature and constitution of the place and people there."—*Digest of* 1822, pages 6, 7, 8 *of Charter*.

"And further, our will and pleasure is, and we do hereby for us, our heirs and successors, establish and ordain that yearly, once in the year forever hereafter, namely, the aforesaid Wednesday in May, and at the town of Newport, or elsewhere, if urgent occasion do require, the governor, deputy governor, and assistants of the said company, and other officers of the said company, or such of them as the general assembly shall think

fit, shall be in the said general court or assembly to be held from that day or time, newly chosen for the year ensuing by such greater part of said company for the time being as shall be then and there present."—*Digest of* 1822, page 9 *of the Charter.*

These extracts from the charter will serve to show the original structure of the government of Rhode Island and Providence Plantations. The charter provides that the governor, deputy governor, and assistants shall be chosen annually on the first Wednesday of May in each and every year by a majority of the company at Newport. The deputies to the general assembly were to be chosen in the several towns for which they were elected semi-annually, and to assemble on the first Wednesday in May and the last Wednesday in October, or oftener, in case it should be requisite, at such place as might be designated by law. The governor, deputy governor, assistants, and deputies, as organized under the charter, formed one body, which is called the general assembly.

The unlimited power granted to this body to repeal or modify the existing regulations for the government of the colony, or to adopt such new regulations as might be deemed expedient for the convenience of the people, has been exercised from time to time before and since the Revolution, when Rhode Island became one of the States of the Union. These modifications have materially changed the provisions of the charter, and established fundamental principles of government inconsistent with those recognized and ordained by the charter, which now remains only the nominal foundation of the legislation of the State. Your committee think it necessary to present a summary of these interpolations on the charter, as they furnish a practical illustration of the powers claimed and exercised in this respect by the general assembly of Rhode Island, the validity of which does not seem to have been at any time questioned:

1. By the last clause of the charter above cited the election of governor, deputy governor, and assistants is required to be made at Newport on the first Wednesday of May in each year by the whole body of the freemen of the company assembled at that place in person. This is the literal requirement of the charter, and was made, we presume, in conformity to analogous customs in England and Wales in the elections for counties and boroughs. The difficulty of convening the freemen from the different towns of the colony at the season indicated, and the expense and inconvenience attending their assemblage at Newport for an uncertain length of time until an election could be effected, very speedily suggested a modification of this requirement. As early as October 26, 1664, a little more than one year after the reception of the charter, after stating the inconveniences attending a personal voting at Newport, the general assembly ordained that "voting by proxces be enjoyed by all the freemen of this collony, and that each freeman desiering to vote by proxy shall subscribe their names on the outside, and deliver his votts sealed up into the hands of a majestrate in the face of a towne metting lawfully called, and notice given for that porpose * * * which sayd votts shall be by such whome the General Assembly shall appoynt, opened and delivered forth as the respective choice of the several votts shall requier; provided that this order shall noe way prejudice or discorradge any who desier to be personally present."—*Ancient Records*, page 256.

This palpable departure from the original provisions of the charter continued to be the law of Rhode Island for nearly a century, viz, until August, 1760, when a different arrangement was substituted, but still more manifestly departing from the literal requirements of that instrument.

2. As stated in our remarks immediately following the passages of the charter above cited, the general assembly of the colony was constituted into one body, consisting of a governor, deputy governor, and ten assistants, and so many deputies elected from the freemen of the several towns as are specifically stated in the second of those quotations. This single body was invested with all the powers, legislative and judicial, which the clauses of the charter enumerate, and acted as a single body, determining its acts by a majority of voices for the three successive years subsequent to its creation by charter. In March 27, 1666, at the suggestion of the towns of Portsmouth and Warwick, an act passed the general assembly "concerning deputies sitting apart." After stating the inconveniences of a single assembly, they enact and declare that "it is freely agreed that the request of the towns aforesaid be granted, and ordered that the magestrates" (governor, deputy governor, and assistants) "sitt by themselves, and the deputies by themselves; and that each house soe sitting have equal power and priviledge in the proposing, composing, and propogatting any act, order, and law in generall assembly, and that nether house in generall assembly shall have power, without the concurrance of the majour part of the other house, to make any law or order to be accounted as an acte of the generall assembly."—*Ancient Records*, page 298.

This law of the assembly of 1666, and not the charter, is the whole basis of the present organization of the legislature of Rhode Island, which consists, as we have before stated, as at present constituted, of two branches—a senate and a house of representatives, each armed with a negative upon the other.

3. The act of August, 1760, is another and remarkable departure from the literal requirements of the charter of King Charles. By the charter itself the whole body of freemen

the colony were to assemble, in person, at Newport, and to elect, by a major vote of ie company, the governor, deputy governor, and assistants. The law of October, 1664, laxed this provision and substituted a mixed system of voting for these officers, partly person and partly by proxy. This continued to be in force until the session of the eneral assembly in August, 1760, when a law was passed entitled "An act regulating ie general election." In the preamble to this act it is set forth "that it is found, by ong experience, the freemen going to Newport to put in their votes for general officers t the elections is very injurious to the interest and public weal of the colony; * * * nd that all the ends of voting may be as fully attained by the freemen's putting in heir proxy votes at the town meeting in their own towns, appointed by law for that urpose, agreeable to the ancient and laudable custom of most of the prudent freemen: Therefore,

"*Be it enacted*, That, for the future, every freeman who is disposed to give his suffrage at he election of general officers in this colony shall do it by putting in a proxy vote in the own meeting *in the town* to which he belongs, on the third Wednesday of April next preeding the general election, agreeable to the law and well-known custom of proxing; and o freeman shall be permitted to vote for general officers at the general election held at Newport, on the first Wednesday in May, but only such as be members of the general assembly."

Thus, by this act of the legislature, the whole system of voting laid down by the charter is radically altered. The assembling of the freemen of the colony at Newport on the first Wednesday in May, as the charter prescribes, is entirely abrogated; the mixed method of voting, partly in person and partly by proxies sent to Newport from the other towns of the colony, is also modified; and the whole system is changed to the law as it now stands, with very slight variations, viz, that the freemen, on the third Wednesday of April in each year, in their *several towns*, shall proceed to elect a governor, deputy governor, and assistants, and not in one body assembled in Newport, on the first Wednesday in May.

The law of 1760 was deficient in one important particular, which the act of January, 1832 (the particular act now complained of), was intended to remedy. Formerly, and from the reception of the charter until August, 1760, a failure to elect general officers was a contingency not to be apprehended, because the freemen assembled at Newport would continue assembled and voting until a choice were effected. But by the act of August, 1760, the freemen were to vote *in separate towns*, and the votes thus given having been transmitted to Newport, were counted in the presence of the governor and assistants of the former year, in convention with the deputies then recently elected. If it appeared, on counting, that there was no choice by the major part of the freemen, there was no provision in this act for a second trial for these offices *in the separate towns;* and he body of the freemen not being assembled in Newport, it was impossible to go on in he ancient method and continue to vote till the choice was consummated. If the requirements of the charter, and the usages under it, had been strictly complied with, the body of the freemen would have appeared at Newport, the governor and assistants of the former year would have presided in the election, and the voting would have gone on until an election were completed. The act of August, 1760, having changed this arrangement in the manner above stated, all that the act of January, 1832, did was to follow out its provisions, and to declare that the governor and assistants of the former year should hold over, while other trials were had *in the separate towns*, and until an election of general officers was effected by those trials, exactly as they would have held over if the election had been made by the body of the freemen assembled at Newport. But of the character of this act your committee will speak more particularly hereafter.

4. Your committee will barely advert to two other acts of the legislature of Rhode Island which conflict more or less with the provisions of the charter, but whose validity they believe has never been disputed; such as the act devolving the powers and duties of governor on a person who had never been elected by the freemen to that office, in certain cases: also, the act authorizing the governor, in certain events, to appoint times and places of the meeting of the general assembly, although the charter provides that the assembly itself shall appoint such times and places; both these acts being embodied in "the act to provide for the performance of the duties of the governor in certain cases, and also for regulating the sitting of the general assembly."—*Digest of* 1822, page 99.

One other act of the general assembly deserves notice in this connection, as illustrating in a striking manner the peculiar character of legislation in Rhode Island. The bill of rights, which in all other States emanates from the people in their primary capacity, in this State is incorporated into its code of statutes in the form of an act declaratory of the rights of the people.

The foregoing review of the innovations made from time to time during the existence both of the colonial and State governments of Rhode Island on the provisions of the charter conferring on the people political rights demonstrates the power claimed and exer-

cised by the general assembly to alter or modify, without restraint, the fundamental principles of the form of government transmitted to them by the King of Great Britain. This power has never been denied either in reference to its validity or extent. The right of suffrage has been extended to a class of citizens who did not enjoy it under the charter; the elections directed to be held at Newport on the first Wednesday of May in each year are held throughout the State on such days and at such places as are provided for by law; the manner of holding and conducting elections and of returning the votes is changed; the general assembly is divided into two separate branches, each having a negative on the action of the other, contrary to the charter, by which it is constituted into one body; a bill of rights, which properly belongs to the constitutions of the several States as a part of the fundamental law, has been given to the people of Rhode Island by a simple act of legislation. These, and many other primary principles, are to be found in the code of statute law of that State, while of the ancient charter there seems to be scarcely a vestige remaining untouched, except that clause which prohibits the enactment of any law contrary to the laws of England; and this became obsolete by virtue of the Revolution.

The people of the State have ratified all these changes, not only by their silent acquiescence, but by their positive sanction. The power to make them was necessary to the welfare of the people, and was wisely reserved in the precise words of the charter. Your committee can perceive nothing in the act of January, 1832, entitled "An act in addition to an act entitled 'An act regulating the manner of admitting freemen, and directing the method of electing officers in this State,'" which assumes a power different in its character from that which had been previously recognized as appertaining to the general assembly. The necessity of proper precautions to prevent an *interregnum* in the government of the State was seen and duly considered by the legislature. They believed it to be not only possible but highly probable that the people might fail at the regular annual election to choose a governor, lieutenant-governor, and a sufficient number of senators to form a constitutional quorom for the transaction of business. The result proves that this apprehension was well founded. The first section of the act declares that in case there be no choice of a governor at an annual election the house of representatives shall order a new election for the choice of a governor, and that in case no choice should then be made, that the order shall be renewed as often as the votes are returned to the general assembly until a governor be elected, or until such proceedings shall become unnecessary by reason of the provision of law for the next annual election; and in the mean time that the governor of the preceding year shall continue, under his former engagement, to exercise all the powers and perform and execute all the functions or duties of the office of governor until another shall be elected and engaged in his place; and shall receive such proportion of the salary as corresponds with the time he shall so serve. The same provisions are made as to the lieutenant-governor and all the other general officers, in case of a like failure to elect those officers at the annual election. The third section of the act relates to the choice of senators (assistants), and directs that new elections shall be ordered as in the cases above mentioned and with the same limitations, unless six senators, being the requisite number to form a quorum, shall have been chosen at the annual election. The contingencies intended to be provided against by this act actually occurred. No governor nor lieutenant-governor was chosen to succeed those of the past year; the number of senators required for a quorum were not elected by the people; and, in compliance with the provisions of the act, new elections were ordered by the house of representatives where a failure to elect had happened, until in the judgment of that house "such proceedings had become unnecessary by reason of the provision of law for the next annual election."

The general assembly, in the mean time, as at that time constituted, continued to perform all the functions which properly belong to that body until the end of the session at Providence, January, 1833. It remains then to be inquired, was this body so assembled the *legislature* of Rhode Island? The law by virtue of which they continued to exercise the powers of legislation is said to be repugnant to the charter, and therefore void. If this be a sound objection it at once annuls every part of their proceedings, and as a necessary consequence, that of choosing a Senator in Congress.

Your committee are unable to find any clause in the charter which forbids the exercise of such a power as that claimed by the passage of the act of January, 1832. It seems, on the contrary, to have been the intention of the crown to perpetuate the existence of the legislative power in the colony by an express provision—that the authority, office, and power of the governor, deputy governor, and assistants shall cease and determine when their successors shall be elected and engaged, and not at the expiration of the term for which they were respectively chosen. The construction of this clause of the charter has been uniform from the commencement of the government up to the present time.

The governor, deputy governor, and senators (assistants) of the preceding year, at the opening of each annual session of the legislature in May, take their seats, and join the house of representatives in grand committee and continue to act until their successors are engaged. This is abundantly sufficient to prove that they hold over, as a matter of course

purpose of organizing the members newly elected to succeed them; and it does not
› be material whether the time required for the performance of this duty be one
: days; for the same principle under which they hold over for a single day would
:o a longer time if it should be required to complete the organization. But it is
:essary to resort to this provision of the charter, or to the practice under it, to estab-
e validity of the power to pass the act of January, 1832. The general power given
charter to the legislature, "from time to time to make, ordain, constitute, or repeal
ıws, statutes, orders and ordinances, forms and ceremonies of government and magis-
s to them shall seem meet," without limitation, is broad enough to cover the whole
l assumed in justification of that act. If Rhode Island had followed the example
sister States of the Union, and adopted a written constitution, it will not be denied
ıis power to continue in existence the legislative body until their successors should
sen and engaged might have been given in that instrument. Shall we then deny to
: right to effect the same object by law when the people have, by a long and unin-
ted acquiescence in that mode of fixing the fundamental principles of the government,
ed to such laws the force and efficiency of a constitutional provision emanating from
ention chosen for that special purpose? Your committee hold it to be an undeni-
:inciple, applicable to all forms of government, that there must exist in the supreme
tive power of the State a capacity to preserve itself from annihilation. Waiving,
›re, all the considerations arising out of the charter and the immemorial usage of
ate, which might be safely relied upon to justify the act in question, there are
grounds on which the exercise of the power claimed may be sustained and vindi-
The constitutions of the several States are, in the broadest sense, *popular*, ema-
directly from the people, and subject to be modified and amended as the people
hink proper. The legislative power embraces every object without distinction
is not expressly prohibited by a declaration of rights or an article of the Constitu-
The structure of the State governments differs in this important respect from the
ıment of the United States, which is restricted in its sphere of action to the dele-
›owers and such as are necessary and proper to carry them into effect. On this prin-
:he legislature of Rhode Island, in the absence of a written constitution, could only
rained in the extent of its powers by some negative provisions of the charter or of the
rights subsequently adopted for the better security of the people in the enjoy-
›f liberty. In neither of these, nor in any other act or instrument now in force, is
to be found any prohibition of the power to continue over an existing legisla-
ntil their successors shall be duly chosen and engaged. The act of January, 1832,
›emed to be necessary to preserve the government from dissolution, and to pro-
›r new and extraordinary elections by the people. It has been sanctioned by the
by their action under it, in their primary capacity, and by the constituted au-
es of their State in the several departments. All the laws, either of a private or
l nature, passed by the legislature at their several sessions from the first Wednes-
May, 1832, to the close of the session, January, 1833, are now in full force and
ion. The highest judicial tribunal of the State was composed of judges elected in
committee of the two houses at the August session, 1832, and their commissions
ssued under the great seal of the State and the signature of the governor, who
ntinued in office by the provisions of the act of January, 1832.
r committee could not expect to find evidence more satisfactory of the character of
dy by which Asher Robbins, the sitting member, was elected a Senator to Congress
ıuary, 1833.
Constitution of the United States expressly declares that "the Senate of the United
shall be composed of two Senators from each State chosen by the legislature
f." But what is the definition of the term legislature? Both its literal and tech-
neaning is, "the power that makes laws." It is the highest attribute of sover-
, and merges all other powers when it does not transcend the limitations contained
: fundamental constitution of the State. When, therefore, we find that during
istence of the general assembly, one branch of which was continued and held their
›y virtue of the law of January, 1832, this legislature passed fourteen laws of a
ıl nature and twenty-eight private acts, many of them acts of incorporation, be-
numerous resolutions on various subjects falling within the range of legislative
, a schedule of which is hereunto annexed, marked C; and when these laws and
tions remain on the statute-book of Rhode Island in full force and effect, sanctioned
licial decisions, and tacitly submitted to by the people over whom they operate,
ıld seem to your committee a very dangerous assumption of power in one branch
ıgress, or even in every department of the General Government combined, to inter-
ith the internal regulations of the State, and to denounce the body by which these
ınd resolutions were passed as a mere assemblage of citizens without any public
:ity whatever, and not the legislature of the State. Such a power does not belong
Federal Government, and would, if claimed and carried out to its full extent, an-

nihilate all the reserved rights of the States. It is a general principle of national law, applicable to all distinct and independent governments, that if there arise any disputes in a State on the fundamental laws and public administration, or on the prerogatives of the different powers of which it is composed, it is the business of the State alone to judge and determine them in conformity to its political constitution. No government has a right to intrude into the domestic affairs of another State and attempt to influence its deliberations or to control its action. This principle is recognized in the Constitution of the United States, by which the respective States united and formed themselves into a federal republic. Conceding, as we feel bound to do, to the State of Rhode Island, in common with all the other States of the Union, the power to decide for itself all questions relating to its domestic policy, there would seem to be no ground on which to rest a doubt that she has decided, in the most solemn manner, the character and powers of the body by which Mr. Robbins was chosen a Senator to Congress. They passed numerous laws which are in full force. They elected judges of the supreme court of the State, who have taken a new engagement or oath of office, and accepted new commissions from the governor; entered on their official duties, and condemned to death a citizen found guilty of a capital offense against the laws of the State. They received compensation out of the treasury of the State for their services, and disbursed the public money necessary for the support of the government. No question has arisen touching or impugning the validity of any one of these acts because they were passed or performed by an incompetent body, with the single exception of the attempt made by a succeeding legislature to vacate the election of Mr. Robbins. Your committee cannot omit to refer to the preamble of the act annulling that election, in which the legislature fully recognize their predecessors as "the general assembly" of the State. The only ground assumed to justify the act declaring the election null and void is comprised in a single sentence of the preamble, in the following words:

"Whereas the general assembly which elected Asher Robbins a Senator to the Senate of the United States on the 19th day of January last *did not comply with the provisions of an act* entitled 'An act in addition to an act entitled "An act regulating the manner of admitting freemen, and directing the method of electing officers in this State,'" by virtue of which the members of one branch of said assembly then held their offices, *but proceeded prematurely therein*, and the said election is *therefore* void, and ought so to be declared by this assembly: Therefore, *Be it enacted, &c.*"

Again, the same legislature at their session held in May, 1833, passed an act to repeal the law of January, 1832, in the ordinary form, but express no opinion that the law so repealed was null and void, and thereby admit its validity up to the date of the repealing act. It is worthy of remark, also, that the same legislature at the session held in October, 1833, passed a special act to carry into effect an act of the legislature passed in January, 1833, changing the mode of electing representatives to Congress, and declaring that a plurality of votes should in future decide the election in certain cases, contrary to the former and long established law of the State, by which a majority of all the votes polled at any such election was necessary to a choice in all cases. Thus the power of the legislature assembled in January, 1833, to enact this important law is fully acknowledged and conceded by their successors, while their power to elect a Senator to Congress is denied and declared null and void. Your committee advert to these acts as conclusive in reference to the character of the body of men which elected Mr. Robbins. If they were competent to bind the people of the State by general laws, which is nowhere contested, they could only exercise such a power in their capacity as the legislature of the State, and as such it was their constitutional right and incumbent duty to choose a Senator to Congress. There was but one governor and but one senate in the State claiming to be a part of the general assembly. If there had existed another body of men, however chosen, contending for the offices of the governor and senators in the State, it will not be denied that their respective rights might be the subject of inquiry in deciding a contested election in the Senate of the United States. But in the absence of any such conflicting claims to these offices when only one legislative body was known in the State which exercised all the power and performed all the functions of the legislature, and whose acts have in every form and by every department of the government been declared valid, it would seem to be a palpable invasion of the sovereignty of the State to abrogate its laws and overthrow its government by denying that a body capable of exercising the powers of legislation existed in the State after the term for which a governor, lieutenant-governor, and senators chosen at the annual election in April, 1831, had expired. To annul the election of Mr. Robbins would involve all these absurdities, and must be productive of confusion and anarchy in the State of which he has been chosed a Senator in Congress.

The time at which the election took place and *the manner* in which it was conducted were in strict conformity to the laws of Rhode Island. The two houses met in grand committee according to law at the session of the general assembly next preceding the expiration of the term of service of Asher Robbins, then a Senator in Congress, and elected

him for another term of six years, to commence on the 3d day of March, 1833, and then the grand committee assembled for this purpose was dissolved. The choice was made by the *legislature* of the State, whose laws are held to be valid and binding throughout the State; they command and receive obedience from the people. No objection is made or can be made either to *the time or manner* of the election. The Senator elected has all the requisite *qualifications* demanded by the Constitution, and his *commission or credentials* were *in due form* delivered to him and presented to the Senate. Your committee hold this to be a vested right, the obligation and effect of which no subsequent legislature of that State could impair: still less had they authority to proceed to the election of another Senator until the seat of the Senator-elect had been vacated by a solemn decision of the Senate of the United States. With these views of the subject referred to them, your committee recommend the adoption of the following resolution:

Resolved, That Asher Robbins, being duly and constitutionally chosen a Senator in Congress from the State of Rhode Island, is entitled to his seat in the Senate.

A.

STATE OF RHODE ISLAND, &c.,
Saturday, January 19, 1833.

In grand committee, elected Asher Robbins Senator in Congress for six years from the fourth of March next.

Robbins 41: Potter 25: Pearce 12.

Grand committee rose.

True copy from senate journal.

HENRY BOWEN,
Secretary.

CREDENTIALS OF THE HON. ASHER ROBBINS.

By his excellency Lemuel H. Arnold, governor, captain-general, and commander-in-chief of the State of Rhode Island and Providence Plantations:

Be it known that Asher Robbins, of Newport, in the State aforesaid, qualified according to the Constitution of the United States for a Senator in the Congress thereof, was by the legislature of said State, at the session thereof holden by adjournment at Providence on the second Monday of January instant, elected a Senator from said State in the Congress of the United States for six years, commencing on the fourth of March next.

In testimony whereof I have hereunto set my hand and caused the seal of said State to be affixed, this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and thirty-three, and of independence the fifty-seventh.

[L. S.] LEMUEL H. ARNOLD.

By his excellency's command:

HENRY BOWEN,
Secretary of State.

VACATING ACT.

State of Rhode Island and Providence Plantations, in general assembly, October session, A. D. 1833.

Whereas the general assembly which elected Asher Robbins a Senator to the Senate of the United States on the nineteenth of January last did not comply with the provisions of an act entitled "An act in addition to an act regulating the manner of admitting freemen and directing the method of electing officers in this State," by virtue of which the members of one branch of said assembly then held their offices, but proceeded prematurely therein, and the said election is therefore void, and ought to be so declared by this assembly: Therefore,

Be it enacted by the general assembly, and by the authority thereof it is enacted, That the said election be, and the same is hereby, declared to be null and void and of no effect; and the office is hereby declared to be vacant.

True copy of record. Witness:

HENRY BOWEN,
Secretary.

By his excellency John Brown Francis, governor, captain-general, and commander-in-chief of the State of Rhode Island and Providence Plantations:

Be it known that the name "Henry Bowen" to the aforewritten attestation subscribed is the proper handwriting of Henry Bowen, esquire, who at the time of subscribing the same was secretary of the State aforesaid, duly elected and qualified according to law: Wherefore, unto his said attestation full faith and credit are to be rendered.

In testimony whereof I have hereunto set my hand and caused the seal of said State to be affixed at Providence this fifteenth day of November, in the year of our Lord one thousand eight hundred and thirty-three, and of independence the fifty-eighth.

[L. S.] JOHN BROWN FRANCIS.

By his excellency's command:

HENRY BOWEN,
Secretary.

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B.

CREDENTIALS OF ELISHA R. POTTER.

By his excellency John Brown Francis, governor, captain-general, and commander-in-chief of the State of Rhode Island and Providence Plantations:

Be it known that Elisha R. Potter, of South Kingstown, in the State aforesaid, qualified according to the Constitution of the United States for a Senator in the Congress thereof, was by the legislature of said State, at the session thereof holden at South Kingstown on the last Monday in October last, elected a Senator from said State in the Congress of the United States for six years, commencing the fourth day of March last.

In testimony whereof I have hereunto set my hand and caused the seal of said State to be affixed at Providence the fifth day of November, in the year of our Lord one thousand eight hundred and thirty-three, and of independence the fifty-eighth.

[L. S.] JOHN BROWN FRANCIS.

By his excellency's command:

HENRY BOWEN,
Secretary.

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C.

Public acts passed by the general assembly of Rhode Island and Providence Plantations from May, 1832, to the close of the session, January, 1833.

1. An act relating to the Burrillville Bank.
2. An act authorizing the city council of the city of Providence to appoint a larger number of members of Engine Company No. 5.
3. An act relating to the overseers of the poor and to the asylum, in the town of Portsmouth
4. An act in relation to the returns of certain justices of the peace.
5. An act in further amendment of an act to establish public schools.
6. An act in addition to the acts in relation to quarantine and to the introduction and spreading of contagious and infectious sickness in this State.
7. An act authorizing certain military officers to be engaged in their commissions.
8. An act in addition to an act entitled an act appointing the several town councils in this State boards of health *ex officio.*
9. An act (November, 1832) in amendment of an act entitled an act relative to the election of Senators and Representatives to represent this State in Congress, and of electors for the elections of a President and Vice-President of the United States.
10. An act authorizing certain military officers to take their engagements or their commissions.
11. An act to prevent hogs going at large in Washington village, in Coventry.
12. An act in relation to extrajudicial oaths.
13. An act (January, 1833) in amendment of an act entitled an act relative to the election of Senators and Representatives to represent this State in Congress, and of electors for the election of a President and Vice-President of the United States.
14. An act regulating criminal process in certain cases.

Private acts passed by the general [illegible] *Rhode Island and Providence Plantations from May, 1832, to the close of the* [illegible] *January, 1833.*

1. An act to incorporate certain persons as a society by the name of St. James Church at Woonsocket Falls, in Smithfield.
2. An act to legitimate Maria, the daughter of Thomas [illegible] and Mary Ann Potter.
3. An act to authorize Henry Yates and [illegible] to put up a [illegible] for the benefit of public schools.
4. An act to incorporate the Greenville Fire Engine Company.
5. An act to revive the charters of certain [illegible] companies.
6. An act to incorporate the Providence [illegible] Company.
7. An act to incorporate the Phœnix Fire [illegible].
8. An act to revive the charters of certain [illegible] companies.
9. An act to amend the charter of the Providence [illegible] of Artillery.
10. An act in amendment of an act incorporating a society by the name of the Pawtucket Academy Company.
11. An act to incorporate the New York, Providence and Boston Railroad Company.
12. An act to incorporate the Rhode Island and [illegible] Railroad Company.
13. An act to authorize the corporation of St. John's [illegible] in Providence to tax the pews in said church.
14. An act in addition to an act entitled an act to incorporate certain persons by the name of the "First Universalist Society in the town of [illegible]."
15. An act to authorize John A. Grace to hold, sell and transfer real estate in this State.
16. An act to incorporate the Albion Village Fire Engine Company.
17. An act to incorporate the Commercial [illegible] Company in Newport.
18. An act to authorize John Chaffee to hold, sell and transfer real estate.
19. An act to incorporate the Warren Rhode Island [illegible] Society.
20. An act in amendment of an act entitled an act to incorporate the Rhode Island and Connecticut Turnpike Corporation.
21. An act to authorize John Paine and Daniel Burgess to put up a [illegible] for the benefit of public schools.
22. An act to incorporate certain persons by the name of the First [illegible] Baptist Church in Warwick.
23. An act to revive an act in amendment of an act to incorporate the Providence and Boston Railroad Company, and for other purposes, and in amendment thereof and in addition thereto.
24. An act to incorporate certain persons by the name of the Woonsocket Fire Engine Society.
25. An act to incorporate the Gloucester and [illegible] Bridge.
26. An act to incorporate the stockholders of the West Greenwich Farmers' Bank in the town of West Greenwich.
27. An act to incorporate the stockholders of the Commercial Bank in the city of Providence.
28. An act to incorporate the stockholders of the [illegible] Bank.

In addition to the above the same general assembly from May 1832 to January, 1833, inclusive, passed—

Thirty-one votes or resolutions [illegible] the persons in commuting the punishments of convicts:

Thirty-seven votes or resolutions authorizing the sale of real estate:

Three resolutions authorizing persons to apply to the [illegible] for the [illegible]:

Six votes or resolutions releasing the persons of certain persons to pay their poll tax:

A resolution for the payment of the salaries of the governor and [illegible] of the preceding year:

A resolution for the payment of the State map:

Resolutions for the payment of a great variety of accounts:

Several votes authorizing new trials:

And, finally, elected all the officers, civil and military, of the State, who severally took their commissions, and acted under them during the whole of this year.

VIEWS OF THE MINORITY.

IN THE SENATE OF THE UNITED STATES.

APRIL 4, 1834.—Read, and ordered to be printed.

The minority of the select committee on the memorial sent herewith by the Hon. Asher Robbins report:

The undersigned, a member of the select committee of the senate to which was referred the subject of a contested seat in the senate from the state of Rhode Island, the

Hon. Asher Robbins being the sitting member and the Hon. Elisha R. Potter claiming the seat occupied by the said Robbins, entertaining opinions and views different from those expressed by the majority of the said committee in their report submitted to the Senate on the 4th day of March instant, respectfully submits the following report:

The course adopted by the committee to settle the facts upon which their opinions were to be formed was to call upon the parties to the controversy for statements of the facts which they wished to prove, or which each wished admitted by his opponent, as being, in their estimation, material to their respective claims. This call was answered by Mr. Potter by the statement signed by him, and dated 11th December last, which is hereto annexed, marked D. Mr. Robbins replied to this statement of Mr. Potter by the paper hereto annexed, marked E. This reply of Mr. Robbins was submitted to Mr. Potter, and drew from him the additional statement signed by him, and dated 31st December last, which is hereto annexed, marked F. Here the statements of fact closed, and Mr. Potter was called upon for such arguments as he might choose to submit to the committee, when he returned the paper annexed, signed by him, dated 21st January last, and hereto annexed, marked G. To this argument Mr. Robbins replied by the paper signed by him, dated 24th January last, and hereto annexed, marked H. Mr. Potter rejoined by the paper signed by him, dated 3d February last, and hereto annexed, marked I. In this state the case was submitted to the committee, each party having accompanied their statements with such proofs from the journals of the legislature of their State and other public records as they considered required. Most of the points established by the proofs submitted are fully admitted and agreed upon by the parties in their statements of fact, and therefore such of them only will be referred to and annexed as may be found material to establish facts not so admitted. The statements and arguments of the parties are annexed, because the undersigned considers the question one of the highest importance, and that it is proper the Senate should see fully the facts which the immediate parties to the controversy have considered in any way material, the arguments by which they have sought to direct the judgments of the members of the committee, and the conclusions they have formed upon the points raised.

The majority of the committee, in the view they have taken of the subject, have not considered it important to print these statements, or but a very small portion of the proofs submitted, but as the course of reflection pursued by the undersigned and the opinion he has formed has been governed by the facts disclosed in these papers, and as the parties have so intermixed fact and argument in all their statements that the one cannot well be separated from the other, he feels that he may not be borne out in his facts without annexing to this report these statements entire, while he is sensible that the arguments he shall offer will be mostly repetitions of those which the parties have presented to him. That both of the parties have assumed positions which are untenable, as well as positions which are wholly irrelevant, is clear to his mind, as he does not doubt it will be to the judgment of the Senate; but he still thinks they have not omitted the true and material points of the controversy, and that their suggestions may do that justice to the subject which it will not receive from any effort of his. The undersigned believes that as to most of the facts assumed by the majority of the committee there will be no dispute; but as there are facts in the case which he considers material, and to which the majority of the committee do not refer in their report, a reference to the statements of the parties and to some of the proofs will be necessary to authorize him to use those facts to sustain his conclusions. And if, under this impression, he should connect with this report any portion of the documents before the committee, which upon examination may not appear to have been necessarily so connected, he feels sure that the Senate will find his excuse in the conviction he is under that the novelty and importance of the question demands a full exhibition of the facts and arguments which are material and relevant, and that the safe course is to withhold nothing which may be important, though that course may lead to the examination of much which is unimportant.

Having reference to these statements, and to such other documents as shall be hereafter referred to, the undersigned makes the following relation of facts upon which he supposes the decision of the question submitted to the committee must mainly rest.

Charles II, King of England, in the year 1663, granted to his colony in America known as the colony of Rhode Island and the Providence Plantations (now the State of Rhode Island) a charter for its civil government, which was submitted to the people of the colony and adopted by them, and thus became the fundamental law of the colonial government. (See the paper annexed, duly certified, and marked K.)

The said charter provided, among other things, that "for the better ordering and managing of the affairs and business of the said company and their successors there shall be one governor, one deputy governor, and ten assistants, to be from time to time constituted, elected, and chosen, out of the freemen of the said company for the time being, in such manner and form as is hereafter in these presents expressed." (See the *Charter*, page 6 of the Laws of Rhode Island, Digest of 1822.)

The charter appointed the first governor, deputy governor, and assistants "to continue in the said several offices, respectively, until the first Wednesday which shall be in the month of May now next coming. (See same page as above.)

The charter further provided "that for ever hereafter, twice in every year, that is to say, on every first Wednesday in the month of May and on every last Wednesday in October, or oftener in case it shall be requisite, the assistants and such of the freemen of the said company, not exceeding six persons for Newport, four persons for each of the respective towns of Providence, Portsmouth, and Warwick, and two persons for each other place, town, or city, who shall be, from time to time, thereunto elected or deputed by the major part of the freemen of the respective towns or places for which they shall be so elected or deputed, shall have a general meeting or assembly, then and there to consult, advise, and determine in and about the affairs and business of the said company and plantations." (See Charter, page 7, Digest of 1822.)

The charter further provided "that the governor, or, in his absence, or by his permission, the deputy governor of the said company for the time being, the assistants, and such of the freemen of the said company as shall be so as aforesaid elected or deputed, or so many of them as shall be present at such meeting or assembly as aforesaid, shall be called the general assembly, and that they, or the greatest part of them then present, whereof the governor or deputy governor and six of the assistants, at least to be seven, shall have, and have hereby, given and granted unto them full power and authority," &c.; thus constituting the legislative body for the colony. (See Charter, same page as last above.)

The charter further provided for the election, time of election, and term of office of the governor, deputy governor, and assistants, in the following words, to wit: "And further, our will and pleasure is, and we do hereby, for us, our heirs and successors, establish and ordain, that yearly, once in the year, for ever hereafter, namely, the aforesaid Wednesday in May, and at the town of Newport, or elsewhere if urgent occasion do require, the governor, deputy governor, and assistants of the said company, and other officers of the said company, or such of them as the general assembly shall think fit, shall be, in the said general court or assembly to be held from that day and time newly chosen *for the year ensuing* by such greater part of the said company, for the time being, as shall be then and there present." (See Charter, page 9, Digest of 1822.)

No charter was granted to this colony by the crown of Great Britain subsequent to that of Charles II above mentioned and previous to the American Revolution, but the colony remained subject to the provisions of that charter so long as it remained a British colony; and the people of the State of Rhode Island, since the Revolution, have formed no constitution of government, but have continued the system of government existing with them at the time of that event, having only changed their allegiance.

From the time of the adoption of the charter in 1663–'64 by the people of the colony up to the year 1831 no change had taken place in the qualifications for the offices of governor, deputy governor, or assistants, or in the terms of their respective offices, but all those officers were elected annually during all that period. The official name of the deputy governor had been changed in the laws to that of lieutenant-governor, the official name of assistants to that of senators, and the official name of the deputies to that of representatives; but these changes of official names or designations were not accompanied by any changes of official powers or duties.

The charter contemplated that all the freemen should assemble at Newport, "or elsewhere if urgent occasion do require," and should vote at the same poll for their governor, lieutenant-governor, and senators. This mode of voting was partially changed soon after the granting of the charter, and a privilege was given to each freeman to attend at Newport and vote in person, or to send his vote by a proxy. The increase of population in the colony and its diffusion over a large extent of territory in the course of time induced the legislature to extend this system of voting by proxy, and to provide for the holding of a poll in each town on the day of an annual election, giving to the freemen of the towns the right to prepare a written or printed ballot containing the names of the persons for whom each should choose to vote for governor, lieutenant-governor, and senators, and all such other general officers as were to be voted for, or as the voter should choose to vote for, with proper designations as to the office designed for each person voted for; which ballot, so prepared, with the full name of the voter written upon the back thereof, he was at liberty to deposit in the ballot-box of his town. Accurate poll-lists of the persons voting were to be kept, and after the close of the poll the ballots so deposited in the box and the indorsement of the name of the voter on the back thereof were to be compared with the poll-list, and when found to agree the original poll-list was to be deposited with the town clerk of the town for the inspection of the freemen thereof, and a copy of the same poll-list, together with the ballots so taken, carefully sealed up by the persons having charge of the poll, was to be delivered to the member of the house of representatives elected for the town, or to a senator, to be by him taken to Newport, and there delivered in the general assem-

bly on the day fixed by the charter for the election at Newport of the governor, lieutenant-governor, and senators, and other general officers. On that day the house of representatives newly elected for the half year then next following take the oath of office, and then proceed to open and count these votes so sent to them for the choice of a governor, lieutenant-governor, and senators, and such other general officers as are to be elected, to compare the votes with the poll-lists also sent and to pronounce the result; and the governor, lieutenant-governor, and senators elected, if any such officers are elected by a majority of all the votes thus given, the result being pronounced, take the oath of office, and the legislature is organized. This system of voting was substantially adopted by the colony as early as the year 1760, and has ever since been and still is the manner in which the freemen of Rhode Island vote for their governor, lieutenant-governor, senators, and other general officers. (See the statements of the parties annexed, and particularly the act of August, 1760, marked L.)

The charter seems also to have contemplated that the whole legislature should have formed one body or aggregate mass; but soon after the granting of the charter the practice was adopted of forming one house of the governor, lieutenant-governor, and assistants, or senators, called the senate, and another house of the representatives elected by the towns, called the house of representatives, and for the purposes of legislation of having the two houses set apart and act separately, each exercising equal legislative powers, and of consequence each having a negative upon the action of the other. This practice is still continued in the organization of the legislature of Rhode Island for legislative purposes, though when acting executively, or acting in the election of a Senator to represent the State in the Senate of the United States, the two houses still act together as one body, and in that State are termed by the laws and practice of the Government "The Grand Committee." (See Laws of the State and Journals of the Legislature.)

The time fixed by the charter for the annual elections of governor, lieutenant-governor, and senators is the first Wednesday in May; and to give time for the freemen to hold the polls in their respective towns, and to have their proxies delivered at Newport by the day required, the law prescribes the third Wednesday in April, in each year, for holding the town meetings, and for receiving and sealing up the proxies in the manner before related. (See page 94 of the Digest of 1822.)

Pursuant to these regulations an annual election for governor, lieutenant-governor, and senators was held in the State of Rhode Island on the third Wednesday of April, 1831; and upon counting the proxies returned to Newport on the first Wednesday in May thereafter, the day fixed by the charter, there appeared to have been a governor, lieutenant-governor, and eight of the ten senators duly elected. These, constituting more than a quorum of the senate, were duly sworn, and, together with the house of representatives, composed the legislature of the State; but no attempt was made to fill the two vacancies in the senate.

No question has been made before the committee, or is understood to exist, as to the proper organization of this legislature, or as to its powers as the legislature of the State—the senate for one year from the first Wednesday in May, 1831, and the house of representatives from the same first Wednesday in May until the last Wednesday in October of the same year.

A new house of representatives was duly elected, and qualified on the last Wednesday in October, 1831, which, together with the senate before mentioned, again constituted a regularly organized legislature of the State, with all the powers possessed by any legislature of Rhode Island.

This legislature, in January, 1832, being regularly convened for the transaction of business, passed an act providing, among other things, that, in case of a failure, at any annual election by the people, of the election of a governor, lieutenant-governor, or a quorum of the senate, such of those officers as had been elected previously, and who should then be the incumbents of the offices, and in whose places no others should be elected, should continue in the respective offices, and to possess the powers and discharge the duties thereof until others should be elected and duly qualified to take their places. (See a copy of this act annexed, marked M.)

The annual election pursuant to the law, for the election of a governor, lieutenant-governor, and senators was again held in the towns on the third Wednesday in April, 1832, and the proxies of the freemen of the State taken and sealed up in the usual form; and on the first Wednesday in May thereafter those proxies were opened and counted at Newport; when it was found that no election of governor, lieutenant-governor, or any senator had been made, no person having received the majority of all the votes given for any one of those offices. (See the statement of the parties annexed.)

The governor, lieutenant-governor, and eight senators elected in 1831, and whose official terms, according to all previous practice of the government, expired on that day, continued to act as the governor, lieutenant-governor, and senators of the State until the first Wednesday in May, 1833, just two years from the time of their last election and

qualification for their respective offices, there having been, in the mean time, between the first Wednesday in May, 1832, and the first Wednesday in May, 1833, five several elections for the choice of persons to fill these offices, the first four of which were special, and held in obedience to a provision contained in the act of January, 1832, before referred to and hereto annexed, and were all unsuccessful; and the fifth was the regular annual election for 1833, held on the third Wednesday in April in that year, in obedience to the general election law of the State, when an election was made of a governor, lieutenant-governor, and eight senators, who took the oaths of office and entered upon the duties on the first Wednesday in May, 1833. (See the statements of the parties annexed.)

During the whole of this period, from the first Wednesday in May, 1832, to the first Wednesday in May, 1833, the house of representatives of the legislature of the State of Rhode Island was in regular organization, and composed of members regularly elected at the ordinary times and in the ordinary manner of electing members to that branch of the legislature of the State, according to the established laws. (See the statements of the parties annexed.)

On the first Wednesday in May, 1832, the Hon. Asher Robbins was a Senator in the Congress of the United States from the State of Rhode Island, and his official term was to expire on the 3d day of March, 1833; and, by a law of the State, its Senators in the Congress of the United States are to "be appointed at the session of the general assembly next preceding the expiration of the term of service of the Senator for the time being, and not before." (See Digest of 1822, page 107, section 6.)

In January, 1833, the body claiming to be the senate of the State of Rhode Island, and acting as such, consisting of the governor, lieutenant-governor, and eight senators, elected on the third Wednesday in April, 1831, and who took their oaths of office and entered upon their official duties on the first Wednesday of May, 1831, and the house of representatives of the State, regularly elected and qualified, being assembled, and acting as the legislature of the State, met in grand committee, and voted for a Senator to represent the State of Rhode Island in the Senate of the Congress of the United States for the term of six years from the 4th day of March then next following, when the term of Mr. Robbins would have expired. Upon counting the votes so given by the persons assuming to be the governor, lieutenant-governor, and senators of the State, and by the members of the house of representatives of the State present and voting. it was found that Asher Robbins had received a majority of the whole number of votes given; whereupon he was declared to be elected. (See the statements of the parties annexed.)

Pursuant to this proceeding, the person then assuming to be the governor of the State of Rhode Island, and acting as such, did, on the 28th day of January then instant, under his hand and the seal of the State, execute and deliver to Mr. Robbins a commission in the ordinary form, according to the laws and practice of the government of the State, for the office of Senator to represent the State in the Senate of the United States for the term of six years, to commence on the 4th day of March thereafter.

The validity of this election of Mr. Robbins to this office is contested upon the ground that the persons acting as the governor, lieutenant-governor, and senators of the State, and, as such, voting for a Senator at the time Mr. Robbins's election was made, were elected on the first Wednesday in May, 1831, "for the year ensuing," and for no longer term; that, upon counting the proxies, and pronouncing the result of the election for governor, lieutenant-governor, and senators, on the first Wednesday in May, 1832, these officers became *functus officii*, so far as related to their election in 1831, whatever that result might be; and that the legislature of the State had not the power to continue their official terms, or official existence, beyond the limits fixed in the charter, of "the year ensuing" their election by the people; and the act of January, 1832, so far as it attempts to perpetuate these officers, without a re election by the freemen of the State, is pronounced to be contrary to the provisions of the charter, and therefore void.

Upon the other side, it is contended, first, that by the charter itself the offices, powers, and duties of these officers do not cease and determine until others are elected in their places; and, second, that the legislature of Rhode Island have, with the acquiescence of the people of that State, passed many laws in contravention of the charter; that the practice of the government, as shown by its legislation, proves that the charter has not been held to be the fundamental law of the State, except as to certain specific grants; and that the act of January, 1832, does not conflict with those grants, and is therefore a valid act in all its parts.

In view of this part of the controversy, the discussion of the following questions appears to be called for:

First. Is the charter before mentioned, granted by Charles II of England to the colony of Rhode Island and the Providence Plantations, to be now considered to any, and, if to any, to what extent as the constitution of government of the State of Rhode Island, and as a constitution binding upon the legislature of that State?

Second. Does that charter fix and prescribe the term of office of the governor, lieutenant-governor, and senators of that State?

Third. Can the legislature of that State, consistently with the powers granted to that body by the charter, extend the official terms of those officers beyond the limit fixed by the charter?

Fourth. Can the Senate of the United States, when these questions are presented to it by the action of the legislature of the State of Rhode Island, in the purported election of a member for this body, look into, and pronounce its opinion upon them, by way of inquiry into the rights of a sitting member to the seat he occupies?

That the charter of 1663 is, to some extent, to be considered as the fundamental law of the State of Rhode Island, and, as such, binding upon, and restrictive of, the legislative power of that State, is admitted by all, and has not been made a question before the committee. The extent to which it is to be so considered is a point upon which not only the parties before the committee, but the members of the committee themselves, disagree. This point, therefore, must be settled by such references to the history of the legislation and practices of the government and people of the State as have been laid before the committee, and by the inferences which that history shall be found to justify. The undersigned will, in the first instance, offer to the Senate some of the evidences which have operated most strongly upon his mind to show the tenacity with which the people, the government, and the legislature of that State have adhered to the charter in its inconvenient and unjust requirements; going most clearly, in his judgment, to show the strong, binding force which has been allowed to it up to this very day; and, having done this, he will review, as concisely as the importance of the subject will allow, the instances cited by the majority of the committee to show that the legislature have not regarded the charter as binding upon, or restrictive of, their powers when the public interests or the public convenience conflicted with its provisions.

First. The charter fixes the standard of representation for the towns of the State in the popular branch of the legislature by giving to the town of Newport six representatives, to the towns of Providence, Portsmouth, and Warwick four representatives each; and to each other "place, town, or city" in the State, two representatives, wholly without regard to population, property, or any other basis upon which representation is usually settled. By the census taken in 1830, in obedience to an act of Congress, the town of Newport, with six representatives, had a population of 8,010 souls, while the town of Providence, with four representatives, had a population of 16,833 souls; thus showing Providence with more than double the population of Newport, and with but two-thirds of its representation in the popular branch of the legislature. The town of Portsmouth has a population of 1,127 souls, a little more than one-sixteenth of the population of Providence, and a representation exactly equal to it. The town of Smithfield has a populatian of 6,857 souls, and two representatives, and the town of Jamestown has a population of 415 souls, and two representatives—equal to the representation of Smithfield. The whole county of Newport has a population of 16,535 souls, and twenty representatives, while the single town of Providence, with but four representatives, has a population of 16,833 souls. These are some of the instances of the greatest disparity, but the statement annexed, marked N, will show the names and population and representation of all the towns in the State, and, in a condensed form, the population and representation of each county in the State. Still, the legislature of Rhode Island have never attempted to equalize the representation of the State, because the charter has been held to be the fundamental law upon the subject, and to restrain its powers in this particular.

Second. Elections of members to the popular branch of the legislature of the State have continued to be made semi-annually, because such was the requirement of the charter; and to comply with this provision of that instrument, and with the custom of the government under it, the legislature is regularly convened four times in each year. Still no attempt has been made by the legislature, though the State is small and the business of legislation for it not extensive, to alter the forms of the government in this respect. The charter has been held to be paramount to its authority, and to control its action, and the action of the people of the State, in this particular.

Third. A majority of all the votes given at any election by the people has been held to be required to elect any officer of the State government, because the charter requires such majority to constitute an election; and notwithstanding that the present controversy has grown wholly out of that requirement, the legislature of the State has never assumed that it had the power to dispense with the rule, and to authorize the election of those officers by a less number of votes than a majority of all the votes given for the office to be filled. Here again the charter has been, and still is, to be held fundamental law.

Fourth. From the granting of the charter in 1663 to the present time, with the single exception now in dispute, the governor, lieutenant-governor, and senators of the State have been elected annually, and have entered upon the duties of their respective offices on the first Wednesday in May in each year, the time prescribed by the charter; have

held their offices and discharged the duties thereof for one year and no longer, without a re-election. In repeated instances vacancies have existed in the Senate in consequence of a failure to elect; by a majority of all the votes given, persons to fill all the places in that body; and those places have, without an exception, until the last Wednesday in May, 1832, remained vacant for the year. Nor was the idea ever suggested that the incumbents of the former year could continue in office, or that they could be otherwise filled than by an election by the freemen of the State. Thus, the act of January, 1832, the charter had ever been considered the fundamental law of the State upon this subject, and paramount to any authority existing in the legislature.

Fifth. The mode of conducting elections of the general officers of the State, and the plan of voting by proxy, before detailed, is considered by the undersigned as an evidence of the strongest character to prove the rigidity with which the people and the legislature of Rhode Island have adhered to the charter in the utmost extent of the spirit of even its minute provisions. The charter was granted when the colony was small, and the extent of territory inhabited was very limited. Indeed, it is but a presumption that Newport, Providence, Portsmouth, and Warwick were all the towns then containing a population of freemen, as those are the only towns named in the distribution of the representation of the colony. The population of the colony, too, must have been very small, and therefore the charter was framed under the contemplation that the annual elections could be conveniently held at one point, and that all the freemen could conveniently assemble and vote at the same poll. The practice of a very few years evinced the inconvenience of this arrangement, and a law was passed presenting to the choice of every voter the alternative of attending the poll at Newport in person, or of sending his written vote in the form and manner prescribed by the law. This mode of voting was continued without material alteration for nearly a century, and until the year 1798. Then the system was introduced of holding a poll in each town, and of requiring the freemen to deposit their proxies there for the general officers, that being for all purposes material to the argument, the same system which now prevails, and which has prevailed from the year 1798 to the present time. It is true that the votes are deposited in a ballot-box in each town, but it is also true that every vote is indorsed by the full name of the freeman who gives it, written upon the back of the ballot; that all the ballots thus put with separate poll-lists of the persons voting, are carefully sealed up at the closing of these polls, that they are in that state put into the hands of a member of the legislature, whose duty it is to deliver them, unopened, in the general assembly at Newport, at the time and place when and where, by the charter, the election of the officers voted for is required to be made; that the votes are there opened and counted, and the result ascertained and pronounced in all respects in strict conformity with the requirements of the charter, except that each freeman, instead of attending in person, has sent his written vote indorsed with his full name, and expressing his free choice. This is the common practice of the people of the State, is the election; and the undersigned cannot but consider it a rigid regard to, and strict fulfillment of, the provisions of the charter in their spirit and beneficial meaning, furnishing the highest evidence of the great extent to which the people and the legislature of that State have observed that instrument as their fundamental law and constitution of government.

Sixth. At the January session of the legislature of Rhode Island, in the year 1824, a law was passed to provide for calling a convention to form a constitution of government for the State. The members of the convention were chosen at the annual election on the third Wednesday of April in that year, and assembled at Newport in June following, and entered upon the discharge of the duties assigned to them. They formed a constitution, which was submitted to the people of the state for their adoption or rejection at town meetings holden on the second Monday of October, 1824. The constitution so formed differed widely, in many respects, from the provisions of the charter, and it was rejected by the people of the State by a vote of only 1,106 for to 3,286 against it, thus commanding the approbation of but a little more than one-third of the persons voting. It is, from the nature of the case, impossible to say upon what particular grounds this strong rejection was made; but it cannot be improper to remark that the constitution so rejected contained, among other provisions varying from those of the charter, the following:

"The supreme executive power of this state shall be vested in a governor, who shall be chosen by the electors properly qualified, and shall hold his office for the term of one year from the first Tuesday in May next succeeding his election, *and until his successor be duly qualified. But if no person shall have a majority of votes, the senate and house of representatives, in joint committee, shall choose a governor, by ballot, from the two persons having the highest number of votes.*"

Here is a departure from the provisions of the charter in two important particulars: First, that the governor in office shall continue to hold "until his successor be duly qualified;" and, second, that in case of a failure by the people to elect by a majority of all the votes given, the legislature might fill the vacancy. It is freely conceded that the extent

to which this provision influenced the decision of the people can never be known, and must ever remain mere matter of opinion; but it is believed that the decisive rejection of this constitution may be properly assumed as a strong evidence of their unyielding attachment to the charter with all its imperfections; and that it would be doing great violence and injustice to the patriotism and intelligence of the people of Rhode Island to suppose that this action on their part took place while they believed that they were without a written constitution of government and wholly dependent for their fundamental law upon the will and pleasure of their legislative bodies.

Seventh. The result of the election in the State of Rhode Island in 1833, after one year of experience under the act of January, 1832, the repeal of that law by the new legislature as one of its first acts; the election again of a new house of representatives in August, 1833; the passage of the act declaring Mr. Robbins's appointment void, in October, 1833, and the appointment of Mr. Potter to represent the State in the Senate of the United States are considered strong evidences that the act of January, 1832, was held by the people of the State to be a violation of the charter, an usurpation of power on the part of the legislature which passed it, and calculated to retain in office men whom they had not elected and did not approve.

Such are the evidences offered to show that the charter has been and is considered by the legislature, the government, and the people of Rhode Island as their fundamental law and constitution of government, to some extent not only, but to the full extent of all its material provisions, except so far as those provisions have been rendered obsolete by the American Revolution and the consequent change of that people from the condition of colonists to that of citizens of a free State.

The majority of the committee entertain a different view upon this subject from that here expressed, and the importance of the question, as well as a proper respect for the opinions of his colleagues upon the committee who differ with him, make it the duty of the undersigned to notice the grounds upon which they rest the conclusion to which they have come. The majority of the committee seem to consider that the power conferred by the charter upon the legislature of the colony "from time to time to make, ordain, constitute, or repeal such laws, statutes, orders, and ordinances, forms, and ceremonies of government and magistracy as to them shall seem meet for the good and welfare of the said company, and for the government and ordering of the lands and hereditaments hereinafter mentioned to be granted, and of the people that do, or at any time hereafter shall, inhabit or be within the same, so as such laws, ordinances, and constitutions, so made, be not contrary and repugnant unto, but, as near as may be, agreeable to the laws of this our realm of England, considering the nature and constitution of the place and people there," grants a power to that body to make laws at variance from, and in contravention of, the provisions of the charter, if such laws "to them shall seem meet for the good and welfare of the said company." This power, they say, "has been exercised from time to time before and since the Revolution, when Rhode Island became one of the States of the Union. These modifications have materially changed the provisions of the charter, and established fundamental principles of government inconsistent with those recognized and ordained by the charter, which now remains only the nominal foundation of the legislation of the State."

The undersigned is unable to assent to the construction which the majority of the committee seem thus to have put upon the clause of the charter above given. He supposes it to be an invariable rule for the construction of every deed or other instrument, and of every law or ordinance, that each part shall be so construed as to make it, to the greatest possible extent, harmonize with, and not be destructive of, any other part or portion of the same deed, instrument, law, or ordinance. The charter of Charles II to the colony of Rhode Island was designed as a system of civil government for the colony; it was a grant from the sovereign to a portion of his subjects for that purpose; it constituted certain offices, and prescribed the powers and the duties in a general manner which should pertain to them. These offices, it will be seen by an examination of the charter, were to constitute the legislature of the colony, and the officers who should fill them were to be the legislators of the colony. To this legislature very broad powers are granted by the charter, and the clause now under consideration is one among the clauses enumerating those powers. Other clauses give other powers, such as to elect and constitute "offices and officers," to grant commissions, "to appoint, order, and direct, erect and settle such places and courts of jurisdiction for the hearing and determining of all actions, cases, matters, and things happening within the said colony and plantation, and which shall be in dispute and depending there;" "to distinguish and set forth the several names and titles, duties, powers, and limits, of each court, office, and officer, superior and inferior;" to contrive and appoint forms of oaths and attestations; "to regulate and order the way and manner of all elections to offices and places of trust;" to limit and distinguish the numbers and bounds of all places, towns, and cities, which may have "the power of electing and sending of freemen to the general assembly;" to direct and au-

thorize the imposing of fines, mulcts, imprisonments, and executing other punishments, pecuniary and corporeal; "to alter, revoke, annul, or pardon, under their common seal, or otherwise, such fines, mulcts, imprisonments, sentences, judgments and condemnations," with many other powers. Now it is respectfully submitted and urged that the power "to make, ordain, constitute, or repeal such Laws, statutes, orders and ordinances, forms and ceremonies of government and magistracy, as to them shall seem meet," granted to the legislature of the colony by the clause of the charter under consideration, should be understood as applicable to the powers and duties above enumerated, and to all the other powers and duties granted and assigned by the charter to the authorities, and not as conferring powers above and beyond the charter which makes the grant. This construction will make the clause in question act in aid of the charter and of the objects designed to be accomplished by it, while the other construction will make it the [illegible] portions of the charter entirely contingent and wholly dependent upon what shall "seem meet" to the legislature. It will also present the singular anomaly of a legislative body standing upon the charter as a constitution of government from which it derives its existence, its constitution, its organization and being as a legislative body, and claiming a power, granted in that charter itself, to subvert the whole instrument. [illegible] will not surely be given to this instrument when a different and at least equally natural one presents itself, which will not make the instrument a [illegible] but will make each part harmonize with the whole, and further the purposes which the whole was intended to accomplish.

But the undersigned respectfully suggests his belief that the majority of the committee are mistaken in the extent to which they seem to suppose the acts of the legislature of Rhode Island have conflicted with the provisions of the charter. [illegible] his views upon this point intelligible to the Senate, he will [illegible] the instances, in their order, wherein the majority think the infringements upon the charter consist.

The first is the permission granted by the legislature of the colony to the freemen of the colony as early as 1664, one year after the granting of the charter, to send to Newport a sealed ballot, expressing the choice of each freeman, [illegible] for the general officers of the colony, instead of compelling each freeman to attend at Newport in person to make that choice; the ballot so sent being required to be sealed up, and to make the [illegible] of the voter written upon its back, to make it a legal ballot. As the [illegible] already expressed his conviction that this law was not a violation of the charter, but a full compliance with it in its spirit and meaning, no further remarks will be made on this, the same point being again raised under the third [illegible] by the majority of the committee of the infringements by the legislature upon the provisions of the charter.

The second is the separation of the legislative body of the colony into two branches, each exercising equal legislative powers, and each possessing a [illegible] acting legislatively. This separation took place in the year [illegible] after the granting of the charter. It was not in [illegible] the undersigned construes its language, that the governor, [illegible] and deputies should sit together in one body, but it is [illegible] governor, lieutenant-governor, and assistants should form one body, [illegible] and the deputies should form another body. How the [illegible] constituted any violation of the charter in its spirit and meaning, [illegible] all to be elected by the people, and at the period required by the charter, [illegible] standing the separation. The same persons were [illegible] colony, whether acting together as one body, or separately as two [illegible] legislature. The only effect, therefore, of the separation would be to [illegible] legislative power by giving the body, small in numbers, a power [illegible] tive acts, upon the more numerous body or house. This [illegible] complaint on the part of the crown which was one [illegible] effect was to limit the exercise of that portion of sovereignty which had been granted to the colony, and not to extend it. It might have [illegible] people, in case it had operated as such an encroachment upon the [illegible] to injure the public interests; but when we find that the measure was taken from the suggestion of two of the most populous towns of the colony, and [illegible] conveniences of a single assembly for legislative purposes, that it was adopted after three years only of practice under the contemplation of the charter of a single house, and that it has, from that time to the present, received the [illegible] tion of the people, the undersigned respectfully submits that this change may be well considered one of those "forms and ceremonies of government and magistracy" which, to the legislature, might well "seem meet," and which that body might well consider within its powers under the charter "for the good and welfare of the said company," and not as the exercise of a power either above or beyond the express grants made by the charter.

By his excellency John Brown Francis, governor, captain-general, and commander-in-chief of the State of Rhode Island and Providence Plantations:

Be it known that the name "Henry Bowen" to the aforewritten attestation subscribed is the proper handwriting of Henry Bowen, esquire, who at the time of subscribing the same was secretary of the State aforesaid, duly elected and qualified according to law: Wherefore, unto his said attestation full faith and credit are to be rendered.

In testimony whereof I have hereunto set my hand and caused the seal of said State to be affixed at Providence this fifteenth day of November, in the year of our Lord one thousand eight hundred and thirty-three, and of independence the fifty-eighth.

[L. S.] JOHN BROWN FRANCIS.

By his excellency's command:

HENRY BOWEN,
Secretary.

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B.

CREDENTIALS OF ELISHA R. POTTER.

By his excellency John Brown Francis, governor, captain-general, and commander-in-chief of the State of Rhode Island and Providence Plantations:

Be it known that Elisha R. Potter, of South Kingstown, in the State aforesaid, qualified according to the Constitution of the United States for a Senator in the Congress thereof, was by the legislature of said State, at the session thereof holden at South Kingstown on the last Monday in October last, elected a Senator from said State in the Congress of the United States for six years, commencing the fourth day of March last.

In testimony whereof I have hereunto set my hand and caused the seal of said State to be affixed at Providence the fifth day of November, in the year of our Lord one thousand eight hundred and thirty-three, and of independence the fifty-eighth.

[L. S.] JOHN BROWN FRANCIS.

By his excellency's command:

HENRY BOWEN,
Secretary.

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C.

Public acts passed by the general assembly of Rhode Island and Providence Plantations from May, 1832, *to the close of the session, January,* 1833.

1. An act relating to the Burrillville Bank.
2. An act authorizing the city council of the city of Providence to appoint a larger number of members of Engine Company No. 5.
3. An act relating to the overseers of the poor and to the asylum, in the town of Portsmouth
4. An act in relation to the returns of certain justices of the peace.
5. An act in further amendment of an act to establish public schools.
6. An act in addition to the acts in relation to quarantine and to the introduction and spreading of contagious and infectious sickness in this State.
7. An act authorizing certain military officers to be engaged in their commissions.
8. An act in addition to an act entitled an act appointing the several town councils in this State boards of health *ex officio.*
9. An act (November, 1832) in amendment of an act entitled an act relative to the election of Senators and Representatives to represent this State in Congress, and of electors for the elections of a President and Vice-President of the United States.
10. An act authorizing certain military officers to take their engagements or their commissions.
11. An act to prevent hogs going at large in Washington village, in Coventry.
12. An act in relation to extrajudicial oaths.
13. An act (January, 1833) in amendment of an act entitled an act relative to the election of Senators and Representatives to represent this State in Congress, and of electors for the election of a President and Vice-President of the United States.
14. An act regulating criminal process in certain cases.

Private acts passed by the general assembly of the State of Rhode Island and Providence Plantations from May, 1832, to the close of the session, January, 1833.

1. An act to incorporate certain persons as a society by the name of St. James Church, at Woonsocket Falls, in Smithfield.
2. An act to legitimate Maria, the daughter of Thomas A. and Mary Ann Potter.
3. An act to authorize Henry Yates and Archibald McIntyre to put forth a lottery for the benefit of public schools.
4. An act to incorporate the Greenville Fire Engine Company.
5. An act to revive the charters of certain military companies.
6. An act to incorporate the Providence Steamboat Company.
7. An act to incorporate the Phœnix Iron Foundry.
8. An act to revive the charters of certain military companies.
9. An act to amend the charter of the Providence Marine Corps of Artillery.
10. An act in amendment of an act incorporating a society by the name of the Pawcatuck Academy Company.
11. An act to incorporate the New York, Providence and Boston Railroad Company.
12. An act to incorporate the Rhode Island and Connecticut Railroad Company.
13. An act to authorize the corporation of St. John's Church, in Providence, to tax the pews in said church.
14. An act in addition to an act entitled an act to incorporate certain persons by the name of the "First Universalist Society in the town of Providence."
15. An act to authorize John A. Grace to hold, convey, and transmit real estate in this State.
16. An act to incorporate the Albion Village Fire Engine Company.
17. An act to incorporate the Commercial Insurance Company in Newport.
18. An act to authorize John Chatburn to hold, convey, and transmit real estate.
19. An act to incorporate the Warren Rhode Island Seaman Friends' Society.
20. An act in amendment of an act entitled an act to incorporate the Rhode Island and Connecticut Turnpike Corporation.
21. An act to authorize John Paine and Daniel Burgess to put forth a lottery for the benefit of public schools.
22. An act to incorporate certain persons by the name of the First General Baptist Church in Warwick.
23. An act to revive an act in amendment of an act to incorporate the Providence and Boston Railroad Company, and for other purposes, and in amendment thereof, and in addition thereto.
24. An act to incorporate certain persons by the name of the Woonsocket Falls Baptist Society.
25. An act to incorporate the Gloucester and Burrillville Safe-guards.
26. An act to incorporate the stockholders of the West Greenwich Farmers' Bank, in the town of West Greenwich.
27. An act to incorporate the stockholders of the Commercial Bank, in the city of Providence.
28. An act to incorporate the stockholders of the Citizens' Union Bank.

In addition to the above the same general assembly, from May, 1832, to January, 1833, inclusive, passed—

Thirty-one votes or resolutions liberating the persons or commuting the punishments of convicts;

Thirty-seven votes or resolutions authorizing the sales of real estates;

Three resolutions authorizing persons to apply to the supreme court for decrees of divorce;

Six votes or resolutions releasing the persons of insolvent debtors on giving bond, &c.;

A resolution for the payment of the salaries of the governor and lieutenant-governor of the preceding year;

A resolution for the payment of the State map;

Resolutions for the payment of a great variety of accounts;

Several votes authorizing new trials;

And, finally, elected all the officers, civil and military, of the State, who severally took their commissions, and acted under them during the whole of that year.

VIEWS OF THE MINORITY.

IN THE SENATE OF THE UNITED STATES.

APRIL 4, 1834.—Read, and ordered to be printed.

The minority of the select committee on the contested seat occupied by the Hon. Asher Robbins report:

The undersigned, a member of the select committee of the Senate to which was referred the subject of a *contested seat in the Senate* from the State of Rhode Island, the

Hon. Asher Robbins being the sitting member and the Hon. Elisha R. Potter claiming the seat occupied by the said Robbins, entertaining opinions and views different from those expressed by the majority of the said committee in their report submitted to the Senate on the 4th day of March instant, respectfully submits the following report:

The course adopted by the committee to settle the facts upon which their opinions were to be formed was to call upon the parties to the controversy for statements of the facts which they wished to prove, or which each wished admitted by his opponent, as being, in their estimation, material to their respective claims. This call was answered by Mr. Potter by the statement signed by him, and dated 11th December last, which is hereto annexed, marked D. Mr. Robbins replied to this statement of Mr. Potter by the paper hereto annexed, marked E. This reply of Mr. Robbins was submitted to Mr. Potter, and drew from him the additional statement signed by him, and dated 31st December last, which is hereto annexed, marked F. Here the statements of fact closed, and Mr. Potter was called upon for such arguments as he might choose to submit to the committee, when he returned the paper annexed, signed by him, dated 21st January last, and hereto annexed, marked G. To this argument Mr. Robbins replied by the paper signed by him, dated 24th January last, and hereto annexed, marked H. Mr. Potter rejoined by the paper signed by him, dated 3d February last, and hereto annexed, marked I. In this state the case was submitted to the committee, each party having accompanied their statements with such proofs from the journals of the legislature of their State and other public records as they considered required. Most of the points established by the proofs submitted are fully admitted and agreed upon by the parties in their statements of fact, and therefore such of them only will be referred to and annexed as may be found material to establish facts not so admitted. The statements and arguments of the parties are annexed, because the undersigned considers the question one of the highest importance, and that it is proper the Senate should see fully the facts which the immediate parties to the controversy have considered in any way material, the arguments by which they have sought to direct the judgments of the members of the committee, and the conclusions they have formed upon the points raised.

The majority of the committee, in the view they have taken of the subject, have not considered it important to print these statements, or but a very small portion of the proofs submitted, but as the course of reflection pursued by the undersigned and the opinion he has formed has been governed by the facts disclosed in these papers, and as the parties have so intermixed fact and argument in all their statements that the one cannot well be separated from the other, he feels that he may not be borne out in his facts without annexing to this report these statements entire, while he is sensible that the arguments he shall offer will be mostly repetitions of those which the parties have presented to him. That both of the parties have assumed positions which are untenable, as well as positions which are wholly irrelevant, is clear to his mind, as he does not doubt it will be to the judgment of the Senate; but he still thinks they have not omitted the true and material points of the controversy, and that their suggestions may do that justice to the subject which it will not receive from any effort of his. The undersigned believes that as to most of the facts assumed by the majority of the committee there will be no dispute; but as there are facts in the case which he considers material, and to which the majority of the committee do not refer in their report, a reference to the statements of the parties and to some of the proofs will be necessary to authorize him to use those facts to sustain his conclusions. And if, under this impression, he should connect with this report any portion of the documents before the committee, which upon examination may not appear to have been necessarily so connected, he feels sure that the Senate will find his excuse in the conviction he is under that the novelty and importance of the question demands a full exhibition of the facts and arguments which are material and relevant, and that the safe course is to withhold nothing which may be important, though that course may lead to the examination of much which is unimportant.

Having reference to these statements, and to such other documents as shall be hereafter referred to, the undersigned makes the following relation of facts upon which he supposes the decision of the question submitted to the committee must mainly rest.

Charles II, King of England, in the year 1663, granted to his colony in America known as the colony of Rhode Island and the Providence Plantations (now the State of Rhode Island) a charter for its civil government, which was submitted to the people of the colony and adopted by them, and thus became the fundamental law of the colonial government. (See the paper annexed, duly certified, and marked K.)

The said charter provided, among other things, that "for the better ordering and managing of the affairs and business of the said company and their successors there shall be one governor, one deputy governor, and ten assistants, to be from time to time constituted, elected, and chosen, out of the freemen of the said company for the time being, in such manner and form as is hereafter in these presents expressed." (See the *Charter, page 6 of the* Laws of Rhode Island, Digest of 1822.)

The charter appointed the first governor, deputy governor, and assistants "to continue in the said several offices, respectively, until the first Wednesday which shall be in the month of May now next coming. (See same page as above.)

The charter further provided "that for ever hereafter, twice in every year, that is to say, on every first Wednesday in the month of May and on every last Wednesday in October, or oftener in case it shall be requisite, the assistants and such of the freemen of the said company, not exceeding six persons for Newport, four persons for each of the respective towns of Providence, Portsmouth, and Warwick, and two persons for each other place, town, or city, who shall be, from time to time, thereunto elected or deputed by the major part of the freemen of the respective towns or places for which they shall be so elected or deputed, shall have a general meeting or assembly, then and there to consult, advise, and determine in and about the affairs and business of the said company and plantations." (See Charter, page 7, Digest of 1822.)

The charter further provided "that the governor, or, in his absence, or by his permission, the deputy governor of the said company for the time being, the assistants, and such of the freemen of the said company as shall be so as aforesaid elected or deputed, or so many of them as shall be present at such meeting or assembly as aforesaid, shall be called the general assembly, and that they, or the greatest part of them then present, whereof the governor or deputy governor and six of the assistants, at least to be seven, shall have, and have hereby, given and granted unto them full power and authority," &c.; thus constituting the legislative body for the colony. (See Charter, same page as last above.)

The charter further provided for the election, time of election, and term of office of the governor, deputy governor, and assistants, in the following words, to wit: "And further, our will and pleasure is, and we do hereby, for us, our heirs and successors, establish and ordain, that yearly, once in the year, for ever hereafter, namely, the aforesaid Wednesday in May, and at the town of Newport, or elsewhere if urgent occasion do require, the governor, deputy governor, and assistants of the said company, and other officers of the said company, or such of them as the general assembly shall think fit, shall be, in the said general court or assembly to be held from that day and time newly chosen *for the year ensuing* by such greater part of the said company, for the time being, as shall be then and there present." (See Charter, page 9, Digest of 1822.)

No charter was granted to this colony by the crown of Great Britain subsequent to that of Charles II above mentioned and previous to the American Revolution, but the colony remained subject to the provisions of that charter so long as it remained a British colony; and the people of the State of Rhode Island, since the Revolution, have formed no constitution of government, but have continued the system of government existing with them at the time of that event, having only changed their allegiance.

From the time of the adoption of the charter in 1663–'64 by the people of the colony up to the year 1831 no change had taken place in the qualifications for the offices of governor, deputy governor, or assistants, or in the terms of their respective offices, but all those officers were elected annually during all that period. The official name of the deputy governor had been changed in the laws to that of lieutenant-governor, the official name of assistants to that of senators, and the official name of the deputies to that of representatives; but these changes of official names or designations were not accompanied by any changes of official powers or duties.

The charter contemplated that all the freemen should assemble at Newport, "or elsewhere if urgent occasion do require," and should vote at the same poll for their governor, lieutenant-governor, and senators. This mode of voting was partially changed soon after the granting of the charter, and a privilege was given to each freeman to attend at Newport and vote in person, or to send his vote by a proxy. The increase of population in the colony and its diffusion over a large extent of territory in the course of time induced the legislature to extend this system of voting by proxy, and to provide for the holding of a poll in each town on the day of an annual election, giving to the freemen of the towns the right to prepare a written or printed ballot containing the names of the persons for whom each should choose to vote for governor, lieutenant-governor, and senators, and all such other general officers as were to be voted for, or as the voter should choose to vote for, with proper designations as to the office designed for each person voted for; which ballot, so prepared, with the full name of the voter written upon the back thereof, he was at liberty to deposit in the ballot-box of his town. Accurate poll-lists of the persons voting were to be kept, and after the close of the poll the ballots so deposited in the box and the indorsement of the name of the voter on the back thereof were to be compared with the poll-list, and when found to agree the original poll-list was to be deposited with the town clerk of the town for the inspection of the freemen thereof, and a copy of the same poll-list, together with the ballots so taken, carefully sealed up by the persons having charge of the poll, was to be delivered to the member of the house of representatives elected for the town, or to a senator, to be by him taken to Newport, and there delivered in the general assem-

Hon. Asher Robbins being the sitting member and the Hon. Elisha R. Potter claiming the seat occupied by the said Robbins, entertaining opinions and views different from those expressed by the majority of the said committee in their report submitted to the Senate on the 4th day of March instant, respectfully submits the following report:

The course adopted by the committee to settle the facts upon which their opinions were to be formed was to call upon the parties to the controversy for statements of the facts which they wished to prove, or which each wished admitted by his opponent, as being, in their estimation, material to their respective claims. This call was answered by Mr. Potter by the statement signed by him, and dated 11th December last, which is hereto annexed, marked D. Mr. Robbins replied to this statement of Mr. Potter by the paper hereto annexed, marked E. This reply of Mr. Robbins was submitted to Mr. Potter, and drew from him the additional statement signed by him, and dated 31st December last, which is hereto annexed, marked F. Here the statements of fact closed, and Mr. Potter was called upon for such arguments as he might choose to submit to the committee, when he returned the paper annexed, signed by him, dated 21st January last, and hereto annexed, marked G. To this argument Mr. Robbins replied by the paper signed by him, dated 24th January last, and hereto annexed, marked H. Mr. Potter rejoined by the paper signed by him, dated 3d February last, and hereto annexed, marked I. In this state the case was submitted to the committee, each party having accompanied their statements with such proofs from the journals of the legislature of their State and other public records as they considered required. Most of the points established by the proofs submitted are fully admitted and agreed upon by the parties in their statements of fact, and therefore such of them only will be referred to and annexed as may be found material to establish facts not so admitted. The statements and arguments of the parties are annexed, because the undersigned considers the question one of the highest importance, and that it is proper the Senate should see fully the facts which the immediate parties to the controversy have considered in any way material, the arguments by which they have sought to direct the judgments of the members of the committee, and the conclusions they have formed upon the points raised.

The majority of the committee, in the view they have taken of the subject, have not considered it important to print these statements, or but a very small portion of the proofs submitted, but as the course of reflection pursued by the undersigned and the opinion he has formed has been governed by the facts disclosed in these papers, and as the parties have so intermixed fact and argument in all their statements that the one cannot well be separated from the other, he feels that he may not be borne out in his facts without annexing to this report these statements entire, while he is sensible that the arguments he shall offer will be mostly repetitions of those which the parties have presented to him. That both of the parties have assumed positions which are untenable, as well as positions which are wholly irrelevant, is clear to his mind, as he does not doubt it will be to the judgment of the Senate; but he still thinks they have not omitted the true and material points of the controversy, and that their suggestions may do that justice to the subject which it will not receive from any effort of his. The undersigned believes that as to most of the facts assumed by the majority of the committee there will be no dispute; but as there are facts in the case which he considers material, and to which the majority of the committee do not refer in their report, a reference to the statements of the parties and to some of the proofs will be necessary to authorize him to use those facts to sustain his conclusions. And if, under this impression, he should connect with this report any portion of the documents before the committee, which upon examination may not appear to have been necessarily so connected, he feels sure that the Senate will find his excuse in the conviction he is under that the novelty and importance of the question demands a full exhibition of the facts and arguments which are material and relevant, and that the safe course is to withhold nothing which may be important, though that course may lead to the examination of much which is unimportant.

Having reference to these statements, and to such other documents as shall be hereafter referred to, the undersigned makes the following relation of facts upon which he supposes the decision of the question submitted to the committee must mainly rest.

Charles II, King of England, in the year 1663, granted to his colony in America known as the colony of Rhode Island and the Providence Plantations (now the State of Rhode Island) a charter for its civil government, which was submitted to the people of the colony and adopted by them, and thus became the fundamental law of the colonial government. (See the paper annexed, duly certified, and marked K.)

The said charter provided, among other things, that "for the better ordering and managing of the affairs and business of the said company and their successors there shall be one governor, one deputy governor, and ten assistants, to be from time to time constituted, elected, and chosen, out of the freemen of the said company for the time being, in such manner and form as is hereafter in these presents expressed." (See the *Charter, page 6* of the Laws of Rhode Island, Digest of 1822.)

The charter appointed the first governor, deputy governor, and assistants "to continue in the said several offices, respectively, until the first Wednesday which shall be in the month of May now next coming. (See same page as above.)

The charter further provided "that for ever hereafter, twice in every year, that is to say, on every first Wednesday in the month of May and on every last Wednesday in October, or oftener in case it shall be requisite, the assistants and such of the freemen of the said company, not exceeding six persons for Newport, four persons for each of the respective towns of Providence, Portsmouth, and Warwick, and two persons for each other place, town, or city, who shall be, from time to time, thereunto elected or deputed by the major part of the freemen of the respective towns or places for which they shall be so elected or deputed, shall have a general meeting or assembly, then and there to consult, advise, and determine in and about the affairs and business of the said company and plantations." (See Charter, page 7, Digest of 1822.)

The charter further provided "that the governor, or, in his absence, or by his permission, the deputy governor of the said company for the time being, the assistants, and such of the freemen of the said company as shall be so as aforesaid elected or deputed, or so many of them as shall be present at such meeting or assembly as aforesaid, shall be called the general assembly, and that they, or the greatest part of them then present, whereof the governor or deputy governor and six of the assistants, at least to be seven, shall have, and have hereby, given and granted unto them full power and authority," &c.; thus constituting the legislative body for the colony. (See Charter, same page as last above.)

The charter further provided for the election, time of election, and term of office of the governor, deputy governor, and assistants, in the following words, to wit: "And further, our will and pleasure is, and we do hereby, for us, our heirs and successors, establish and ordain, that yearly, once in the year, for ever hereafter, namely, the aforesaid Wednesday in May, and at the town of Newport, or elsewhere if urgent occasion do require, the governor, deputy governor, and assistants of the said company, and other officers of the said company, or such of them as the general assembly shall think fit, shall be, in the said general court or assembly to be held from that day and time newly chosen *for the year ensuing* by such greater part of the said company, for the time being, as shall be then and there present." (See Charter, page 9, Digest of 1822.)

No charter was granted to this colony by the crown of Great Britain subsequent to that of Charles II above mentioned and previous to the American Revolution, but the colony remained subject to the provisions of that charter so long as it remained a British colony; and the people of the State of Rhode Island, since the Revolution, have formed no constitution of government, but have continued the system of government existing with them at the time of that event, having only changed their allegiance.

From the time of the adoption of the charter in 1663–'64 by the people of the colony up to the year 1831 no change had taken place in the qualifications for the offices of governor, deputy governor, or assistants, or in the terms of their respective offices, but all those officers were elected annually during all that period. The official name of the deputy governor had been changed in the laws to that of lieutenant-governor, the official name of assistants to that of senators, and the official name of the deputies to that of representatives; but these changes of official names or designations were not accompanied by any changes of official powers or duties.

The charter contemplated that all the freemen should assemble at Newport, "or elsewhere if urgent occasion do require," and should vote at the same poll for their governor, lieutenant-governor, and senators. This mode of voting was partially changed soon after the granting of the charter, and a privilege was given to each freeman to attend at Newport and vote in person, or to send his vote by a proxy. The increase of population in the colony and its diffusion over a large extent of territory in the course of time induced the legislature to extend this system of voting by proxy, and to provide for the holding of a poll in each town on the day of an annual election, giving to the freemen of the towns the right to prepare a written or printed ballot containing the names of the persons for whom each should choose to vote for governor, lieutenant-governor, and senators, and all such other general officers as were to be voted for, or as the voter should choose to vote for, with proper designations as to the office designed for each person voted for; which ballot, so prepared, with the full name of the voter written upon the back thereof, he was at liberty to deposit in the ballot-box of his town. Accurate poll-lists of the persons voting were to be kept, and after the close of the poll the ballots so deposited in the box and the indorsement of the name of the voter on the back thereof were to be compared with the poll-list, and when found to agree the original poll-list was to be deposited with the town clerk of the town for the inspection of the freemen thereof, and a copy of the same poll-list, together with the ballots so taken, carefully sealed up by the persons having charge of the poll, was to be delivered to the member of the house of representatives elected for the town, or to a senator, to be by him taken to Newport, and there delivered in the general assem-

nihilate all the reserved rights of the States. It is a general principle of national law, applicable to all distinct and independent governments, that if there arise any disputes in a State on the fundamental laws and public administration, or on the prerogatives of the different powers of which it is composed, it is the business of the State alone to judge and determine them in conformity to its political constitution. No government has a right to intrude into the domestic affairs of another State and attempt to influence its deliberations or to control its action. This principle is recognized in the Constitution of the United States, by which the respective States united and formed themselves into a federal republic. Conceding, as we feel bound to do, to the State of Rhode Island, in common with all the other States of the Union, the power to decide for itself all questions relating to its domestic policy, there would seem to be no ground on which to rest a doubt that she has decided, in the most solemn manner, the character and powers of the body by which Mr. Robbins was chosen a Senator to Congress. They passed numerous laws which are in full force. They elected judges of the supreme court of the State, who have taken a new engagement or oath of office, and accepted new commissions from the governor; entered on their official duties, and condemned to death a citizen found guilty of a capital offense against the laws of the State. They received compensation out of the treasury of the State for their services, and disbursed the public money necessary for the support of the government. No question has arisen touching or impugning the validity of any one of these acts because they were passed or performed by an incompetent body, with the single exception of the attempt made by a succeeding legislature to vacate the election of Mr. Robbins. Your committee cannot omit to refer to the preamble of the act annulling that election, in which the legislature fully recognize their predecessors as "the general assembly" of the State. The only ground assumed to justify the act declaring the election null and void is comprised in a single sentence of the preamble, in the following words:

"Whereas the general assembly which elected Asher Robbins a Senator to the Senate of the United States on the 19th day of January last *did not comply with the provisions of an act* entitled 'An act in addition to an act entitled "An act regulating the manner of admitting freemen, and directing the method of electing officers in this State,'" by virtue of which the members of one branch of said assembly then held their offices, *but proceeded prematurely therein*, and the said election is *therefore* void, and ought so to be declared by this assembly: Therefore, *Be it enacted, &c.*"

Again, the same legislature at their session held in May, 1833, passed an act to repeal the law of January, 1832, in the ordinary form, but express no opinion that the law so repealed was null and void, and thereby admit its validity up to the date of the repealing act. It is worthy of remark, also, that the same legislature at the session held in October, 1833, passed a special act to carry into effect an act of the legislature passed in January, 1833, changing the mode of electing representatives to Congress, and declaring that a plurality of votes should in future decide the election in certain cases, contrary to the former and long established law of the State, by which a majority of all the votes polled at any such election was necessary to a choice in all cases. Thus the power of the legislature assembled in January, 1833, to enact this important law is fully acknowledged and conceded by their successors, while their power to elect a Senator to Congress is denied and declared null and void. Your committee advert to these acts as conclusive in reference to the character of the body of men which elected Mr. Robbins. If they were competent to bind the people of the State by general laws, which is nowhere contested, they could only exercise such a power in their capacity as the legislature of the State, and as such it was their constitutional right and incumbent duty to choose a Senator to Congress. There was but one governor and but one senate in the State claiming to be a part of the general assembly. If there had existed another body of men, however chosen, contending for the offices of the governor and senators in the State, it will not be denied that their respective rights might be the subject of inquiry in deciding a contested election in the Senate of the United States. But in the absence of any such conflicting claims to these offices when only one legislative body was known in the State which exercised all the power and performed all the functions of the legislature, and whose acts have in every form and by every department of the government been declared valid, it would seem to be a palpable invasion of the sovereignty of the State to abrogate its laws and overthrow its government by denying that a body capable of exercising the powers of legislation existed in the State after the term for which a governor, lieutenant-governor, and senators chosen at the annual election in April, 1831, had expired. To annul the election of Mr. Robbins would involve all these absurdities, and must be productive of confusion and anarchy in the State of which he has been chosed a Senator in Congress.

The time at which the election took place and *the manner* in which it was conducted were in strict conformity to the laws of Rhode Island. The two houses met in grand committee according to law at the session of the general assembly next preceding the expiration of the term of service of Asher Robbins, then a Senator in Congress, and elected

him for another term of six years, to commence on the 3d day of March, 1833, and then the grand committee assembled for this purpose was dissolved. The choice was made by the *legislature* of the State, whose laws are held to be valid and binding throughout the State; they command and receive obedience from the people. No objection is made or can be made either to *the time or manner* of the election. The Senator elected has all the requisite *qualifications* demanded by the Constitution, and his *commission or credentials* were *in due form* delivered to him and presented to the Senate. Your committee hold this to be a vested right, the obligation and effect of which no subsequent legislature of that State could impair; still less had they authority to proceed to the election of another Senator until the seat of the Senator-elect had been vacated by a solemn decision of the Senate of the United States. With these views of the subject referred to them, your committee recommend the adoption of the following resolution:

Resolved, That Asher Robbins, being duly and constitutionally chosen a Senator in Congress from the State of Rhode Island, is entitled to his seat in the Senate.

A.

STATE OF RHODE ISLAND, &c.,
Saturday, January 19, 1833.

In grand committee, elected Asher Robbins Senator in Congress for six years from the fourth of March next.

Robbins 41: Potter 25: Pearce 12.

Grand committee rose.

True copy from senate journal.

HENRY BOWEN,
Secretary.

CREDENTIALS OF THE HON. ASHER ROBBINS.

By his excellency Lemuel H. Arnold, governor, captain-general, and commander-in-chief of the State of Rhode Island and Providence Plantations:

Be it known that Asher Robbins, of Newport, in the State aforesaid, qualified according to the Constitution of the United States for a Senator in the Congress thereof, was by the legislature of said State, at the session thereof holden by adjournment at Providence on the second Monday of January instant, elected a Senator from said State in the Congress of the United States for six years, commencing on the fourth of March next.

In testimony whereof I have hereunto set my hand and caused the seal of said State to be affixed, this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and thirty-three, and of independence the fifty-seventh.

[L. S.] LEMUEL H. ARNOLD.

By his excellency's command:

HENRY BOWEN,
Secretary of State.

VACATING ACT.

State of Rhode Island and Providence Plantations, in general assembly, October session, A. D. 1833.

Whereas the general assembly which elected Asher Robbins a Senator to the Senate of the United States on the nineteenth of January last did not comply with the provisions of an act entitled "An act in addition to an act regulating the manner of admitting freemen and directing the method of electing officers in this State," by virtue of which the members of one branch of said assembly then held their offices, but proceeded prematurely therein, and the said election is therefore void, and ought to be so declared by this assembly: Therefore,

Be it enacted by the general assembly, and by the authority thereof it is enacted, That the said election be, and the same is hereby, declared to be null and void and of no effect; and the office is hereby declared to be vacant.

True copy of record. Witness:

HENRY BOWEN,
Secretary.

cised by the general assembly to alter or modify, without restraint, the fundamental principles of the form of government transmitted to them by the King of Great Britain. This power has never been denied either in reference to its validity or extent. The right of suffrage has been extended to a class of citizens who did not enjoy it under the charter; the elections directed to be held at Newport on the first Wednesday of May in each year are held throughout the State on such days and at such places as are provided for by law; the manner of holding and conducting elections and of returning the votes is changed; the general assembly is divided into two separate branches, each having a negative on the action of the other, contrary to the charter, by which it is constituted into one body; a bill of rights, which properly belongs to the constitutions of the several States as a part of the fundamental law, has been given to the people of Rhode Island by a simple act of legislation. These, and many other primary principles, are to be found in the code of statute law of that State, while of the ancient charter there seems to be scarcely a vestige remaining untouched, except that clause which prohibits the enactment of any law contrary to the laws of England; and this became obsolete by virtue of the Revolution.

The people of the State have ratified all these changes, not only by their silent acquiescence, but by their positive sanction. The power to make them was necessary to the welfare of the people, and was wisely reserved in the precise words of the charter. Your committee can perceive nothing in the act of January, 1832, entitled "An act in addition to an act entitled 'An act regulating the manner of admitting freemen, and directing the method of electing officers in this State,'" which assumes a power different in its character from that which had been previously recognized as appertaining to the general assembly. The necessity of proper precautions to prevent an *interregnum* in the government of the State was seen and duly considered by the legislature. They believed it to be not only possible but highly probable that the people might fail at the regular annual election to choose a governor, lieutenant-governor, and a sufficient number of senators to form a constitutional quorom for the transaction of business. The result proves that this apprehension was well founded. The first section of the act declares that in case there be no choice of a governor at an annual election the house of representatives shall order a new election for the choice of a governor, and that in case no choice should then be made, that the order shall be renewed as often as the votes are returned to the general assembly until a governor be elected, or until such proceedings shall become unnecessary by reason of the provision of law for the next annual election; and in the mean time that the governor of the preceding year shall continue, under his former engagement, to exercise all the powers and perform and execute all the functions or duties of the office of governor until another shall be elected and engaged in his place; and shall receive such proportion of the salary as corresponds with the time he shall so serve. The same provisions are made as to the lieutenant-governor and all the other general officers, in case of a like failure to elect those officers at the annual election. The third section of the act relates to the choice of senators (assistants), and directs that new elections shall be ordered as in the cases above mentioned and with the same limitations, unless six senators, being the requisite number to form a quorum, shall have been chosen at the annual election. The contingencies intended to be provided against by this act actually occurred. No governor nor lieutenant-governor was chosen to succeed those of the past year; the number of senators required for a quorum were not elected by the people; and, in compliance with the provisions of the act, new elections were ordered by the house of representatives where a failure to elect had happened, until in the judgment of that house "such proceedings had become unnecessary by reason of the provision of law for the next annual election."

The general assembly, in the mean time, as at that time constituted, continued to perform all the functions which properly belong to that body until the end of the session at Providence, January, 1833. It remains then to be inquired, was this body so assembled the *legislature* of Rhode Island? The law by virtue of which they continued to exercise the powers of legislation is said to be repugnant to the charter, and therefore void. If this be a sound objection it at once annuls every part of their proceedings, and as a necessary consequence, that of choosing a Senator in Congress.

Your committee are unable to find any clause in the charter which forbids the exercise of such a power as that claimed by the passage of the act of January, 1832. It seems, on the contrary, to have been the intention of the crown to perpetuate the existence of the legislative power in the colony by an express provision—that the authority, office, and power of the governor, deputy governor, and assistants shall cease and determine when their successors shall be elected and engaged, and not at the expiration of the term for which they were respectively chosen. The construction of this clause of the charter has been uniform from the commencement of the government up to the present time.

The governor, deputy governor, and senators (assistants) of the preceding year, at the opening of each annual session of the legislature in May, take their seats, and join the house of representatives in grand committee and continue to act until their successors are engaged. This is abundantly sufficient to prove that they hold over, as a matter of course

for the purpose of organizing the members newly elected to succeed them; and it does not seem to be material whether the time required for the performance of this duty be one or more days; for the same principle under which they hold over for a single day would apply to a longer time if it should be required to complete the organization. But it is not necessary to resort to this provision of the charter, or to the practice under it, to establish the validity of the power to pass the act of January, 1832. The general power given in the charter to the legislature, "from time to time to make, ordain, constitute, or repeal such laws, statutes, orders and ordinances, forms and ceremonies of government and magistracy as to them shall seem meet," without limitation, is broad enough to cover the whole ground assumed in justification of that act. If Rhode Island had followed the example of her sister States of the Union, and adopted a written constitution, it will not be denied that this power to continue in existence the legislative body until their successors should be chosen and engaged might have been given in that instrument. Shall we then deny to her the right to effect the same object by law when the people have, by a long and uninterrupted acquiescence in that mode of fixing the fundamental principles of the government, imparted to such laws the force and efficiency of a constitutional provision emanating from a convention chosen for that special purpose? Your committee hold it to be an undeniable principle, applicable to all forms of government, that there must exist in the supreme legislative power of the State a capacity to preserve itself from annihilation. Waiving, therefore, all the considerations arising out of the charter and the immemorial usage of the State, which might be safely relied upon to justify the act in question, there are other grounds on which the exercise of the power claimed may be sustained and vindicated. The constitutions of the several States are, in the broadest sense, *popular*, emanating directly from the people, and subject to be modified and amended as the people may think proper. The legislative power embraces every object without distinction which is not expressly prohibited by a declaration of rights or an article of the Constitution. The structure of the State governments differs in this important respect from the Government of the United States, which is restricted in its sphere of action to the delegated powers and such as are necessary and proper to carry them into effect. On this principle, the legislature of Rhode Island, in the absence of a written constitution, could only be restrained in the extent of its powers by some negative provisions of the charter or of the bill of rights subsequently adopted for the better security of the people in the enjoyment of liberty. In neither of these, nor in any other act or instrument now in force, is there to be found any prohibition of the power to continue over an existing legislature until their successors shall be duly chosen and engaged. The act of January, 1832, was deemed to be necessary to preserve the government from dissolution, and to provide for new and extraordinary elections by the people. It has been sanctioned by the people by their action under it, in their primary capacity, and by the constituted authorities of their State in the several departments. All the laws, either of a private or general nature, passed by the legislature at their several sessions from the first Wednesday of May, 1832, to the close of the session, January, 1833, are now in full force and operation. The highest judicial tribunal of the State was composed of judges elected in grand committee of the two houses at the August session, 1832, and their commissions were issued under the great seal of the State and the signature of the governor, who was continued in office by the provisions of the act of January, 1832.

Your committee could not expect to find evidence more satisfactory of the character of the body by which Asher Robbins, the sitting member, was elected a Senator to Congress in January, 1833.

The Constitution of the United States expressly declares that "the Senate of the United States shall be composed of two Senators from each State chosen by the legislature thereof." But what is the definition of the term legislature? Both its literal and technical meaning is, "the power that makes laws." It is the highest attribute of sovereignty, and merges all other powers when it does not transcend the limitations contained in the fundamental constitution of the State. When, therefore, we find that during the existence of the general assembly, one branch of which was continued and held their seats by virtue of the law of January, 1832, this legislature passed fourteen laws of a general nature and twenty-eight private acts, many of them acts of incorporation, besides numerous resolutions on various subjects falling within the range of legislative power, a schedule of which is hereunto annexed, marked C; and when these laws and resolutions remain on the statute-book of Rhode Island in full force and effect, sanctioned by judicial decisions, and tacitly submitted to by the people over whom they operate, it would seem to your committee a very dangerous assumption of power in one branch of Congress, or even in every department of the General Government combined, to interfere with the internal regulations of the State, and to denounce the body by which these laws and resolutions were passed as a mere assemblage of citizens without any public authority whatever, and not the legislature of the State. Such a power does not belong to the Federal Government, and would, if claimed and carried out to its full extent, an-

nihilate all the reserved rights of the States. It is a general principle of national law, applicable to all distinct and independent governments, that if there arise any disputes in a State on the fundamental laws and public administration, or on the prerogatives of the different powers of which it is composed, it is the business of the State alone to judge and determine them in conformity to its political constitution. No government has a right to intrude into the domestic affairs of another State and attempt to influence its deliberations or to control its action. This principle is recognized in the Constitution of the United States, by which the respective States united and formed themselves into a federal republic. Conceding, as we feel bound to do, to the State of Rhode Island, in common with all the other States of the Union, the power to decide for itself all questions relating to its domestic policy, there would seem to be no ground on which to rest a doubt that she has decided, in the most solemn manner, the character and powers of the body by which Mr. Robbins was chosen a Senator to Congress. They passed numerous laws which are in full force. They elected judges of the supreme court of the State, who have taken a new engagement or oath of office, and accepted new commissions from the governor; entered on their official duties, and condemned to death a citizen found guilty of a capital offense against the laws of the State. They received compensation out of the treasury of the State for their services, and disbursed the public money necessary for the support of the government. No question has arisen touching or impugning the validity of any one of these acts because they were passed or performed by an incompetent body, with the single exception of the attempt made by a succeeding legislature to vacate the election of Mr. Robbins. Your committee cannot omit to refer to the preamble of the act annulling that election, in which the legislature fully recognize their predecessors as "the general assembly" of the State. The only ground assumed to justify the act declaring the election null and void is comprised in a single sentence of the preamble, in the following words:

"Whereas the general assembly which elected Asher Robbins a Senator to the Senate of the United States on the 19th day of January last *did not comply with the provisions of an act* entitled 'An act in addition to an act entitled "An act regulating the manner of admitting freemen, and directing the method of electing officers in this State,"' by virtue of which the members of one branch of said assembly then held their offices, *but proceeded prematurely therein*, and the said election is *therefore* void, and ought so to be declared by this assembly: Therefore, *Be it enacted, &c.*"

Again, the same legislature at their session held in May, 1833, passed an act to repeal the law of January, 1832, in the ordinary form, but express no opinion that the law so repealed was null and void, and thereby admit its validity up to the date of the repealing act. It is worthy of remark, also, that the same legislature at the session held in October, 1833, passed a special act to carry into effect an act of the legislature passed in January, 1833, changing the mode of electing representatives to Congress, and declaring that a plurality of votes should in future decide the election in certain cases, contrary to the former and long established law of the State, by which a majority of all the votes polled at any such election was necessary to a choice in all cases. Thus the power of the legislature assembled in January, 1833, to enact this important law is fully acknowledged and conceded by their successors, while their power to elect a Senator to Congress is denied and declared null and void. Your committee advert to these acts as conclusive in reference to the character of the body of men which elected Mr. Robbins. If they were competent to bind the people of the State by general laws, which is nowhere contested, they could only exercise such a power in their capacity as the legislature of the State, and as such it was their constitutional right and incumbent duty to choose a Senator to Congress. There was but one governor and but one senate in the State claiming to be a part of the general assembly. If there had existed another body of men, however chosen, contending for the offices of the governor and senators in the State, it will not be denied that their respective rights might be the subject of inquiry in deciding a contested election in the Senate of the United States. But in the absence of any such conflicting claims to these offices when only one legislative body was known in the State which exercised all the power and performed all the functions of the legislature, and whose acts have in every form and by every department of the government been declared valid, it would seem to be a palpable invasion of the sovereignty of the State to abrogate its laws and overthrow its government by denying that a body capable of exercising the powers of legislation existed in the State after the term for which a governor, lieutenant-governor, and senators chosen at the annual election in April, 1831, had expired. To annul the election of Mr. Robbins would involve all these absurdities, and must be productive of confusion and anarchy in the State of which he has been chosen a Senator in Congress.

The time at which the election took place and *the manner* in which it was conducted were in strict conformity to the laws of Rhode Island. The two houses met in grand committee according to law at the session of the general assembly next preceding the expiration of the term of service of Asher Robbins, then a Senator in Congress, and elected

him for another term of six years, to commence on the 3d day of March, 1833, and then the grand committee assembled for this purpose was dissolved. The choice was made by the *legislature* of the State, whose laws are held to be valid and binding throughout the State; they command and receive obedience from the people. No objection is made or can be made either to *the time or manner* of the election. The Senator elected has all the requisite *qualifications* demanded by the Constitution, and his *commission or credentials* were *in due form* delivered to him and presented to the Senate. Your committee hold this to be a vested right, the obligation and effect of which no subsequent legislature of that State could impair; still less had they authority to proceed to the election of another Senator until the seat of the Senator-elect had been vacated by a solemn decision of the Senate of the United States. With these views of the subject referred to them, your committee recommend the adoption of the following resolution:

Resolved, That Asher Robbins, being duly and constitutionally chosen a Senator in Congress from the State of Rhode Island, is entitled to his seat in the Senate.

A.

STATE OF RHODE ISLAND, &c.,
Saturday, January 19, 1833.

In grand committee, elected Asher Robbins Senator in Congress for six years from the fourth of March next.

Robbins 41: Potter 25: Pearce 12.

Grand committee rose.

True copy from senate journal.

HENRY BOWEN,
Secretary.

CREDENTIALS OF THE HON. ASHER ROBBINS.

By his excellency Lemuel H. Arnold, governor, captain-general, and commander-in-chief of the State of Rhode Island and Providence Plantations:

Be it known that Asher Robbins, of Newport, in the State aforesaid, qualified according to the Constitution of the United States for a Senator in the Congress thereof, was by the legislature of said State, at the session thereof holden by adjournment at Providence on the second Monday of January instant, elected a Senator from said State in the Congress of the United States for six years, commencing on the fourth of March next.

In testimony whereof I have hereunto set my hand and caused the seal of said State to be affixed, this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and thirty-three, and of independence the fifty-seventh.

[L. S.] LEMUEL H. ARNOLD.

By his excellency's command:

HENRY BOWEN,
Secretary of State.

VACATING ACT.

State of Rhode Island and Providence Plantations, in general assembly, October session, A. D. 1833.

Whereas the general assembly which elected Asher Robbins a Senator to the Senate of the United States on the nineteenth of January last did not comply with the provisions of an act entitled "An act in addition to an act regulating the manner of admitting freemen and directing the method of electing officers in this State," by virtue of which the members of one branch of said assembly then held their offices, but proceeded prematurely therein, and the said election is therefore void, and ought to be so declared by this assembly: Therefore,

Be it enacted by the general assembly, and by the authority thereof it is enacted, That the said election be, and the same is hereby, declared to be null and void and of no effect; and the office is hereby declared to be vacant.

True copy of record. Witness:

HENRY BOWEN,
Secretary.

not seem to the undersigned to prove anything as to the question under discussion. This bill of rights contains nothing which conflicts with any provision of the charter, and it would be one thing to determine that the legislature of Rhode Island possesses the power to pass laws in their character fundamental in cases where no such laws exist, and an entirely different thing to determine that that body possesses the power to pass such laws in contravention of the provisions of the charter, that being, so far as its provisions extend, the fundamental law of the State.

The majority of the committee further say in an enumeration of what they consider legislative infringements upon the charter, "the right of suffrage has been extended to a class of citizens who did not enjoy it under the charter." The undersigned presumes the majority of the committee are right in the fact stated, though his acquaintance with the laws of the State does not enable him to speak other than from the statement in the report; but an examination of the charter will show that this subject is expressly put within the enumerated powers of the legislature, and that therefore any extension of the right of suffrage by that body cannot be an infringement upon their chartered rights. The incorporating clause of the charter, after naming certain individuals, is in the following language: "And all such others as now are or hereafter shall be admitted and made free of the company and society of our colony of Providence Plantations, in the Narragansett Bay, in New England, shall be from time to time and forever hereafter a body corporate and politic in fact and name by the name of the Governor and Company of the English Colony of Rhode Island and Providence Plantations, in New England, in America." (See Charter, page 5, Digest of 1822.)

Among the enumerated powers of the legislature is the following: "And to choose, nominate, and appoint such, and so many, other persons as they shall think fit, and shall be willing to accept the same, to be free of the said company and body politic, and them into the said company to admit." No extension, therefore, by the legislature of the right of suffrage to classes of citizens who did not possess that right at the time of the adoption of the charter could be an infringement upon that instrument, as it grants to the legislature this power, in express terms, to be used as it "shall think fit."

This closes the notice which the undersigned proposes to take of the legislative infringements upon the charter mentioned and relied upon by the majority of the committee to show that the legislature of Rhode Island does not, and has not for a long time, considered it as fundamental law binding its action; but there is one consideration equally applicable to all these alleged legislative encroachments, which ought not to be withheld. It is that the previous review, as well as the statements made by the majority of the committee, show that they all took place before the American Revolution, and while the State was a British colony. The charter, therefore, was then strictly and legally binding, for it was a grant by deed from the sovereign to his subjects, and they could take no rights under the charter which it did not grant, and exercise no powers derived from it in a manner different from that which it pointed out. The authorities and people of the colony were then one party to the charter and the sovereign was the other; and holding their authority, as they all did, by virtue of the charter, any act of those authorities which was in violation of it must have been legally void. It surely would not have been permitted to the colonists, while British subjects, to say, we have disobeyed and violated the charter; we have legislated above and beyond it; we have established a government not at all in conformity to its provisions; we have introduced a mode of elections which it does not authorize; we have organized a legislature upon principles contrary to its requirements, and which does not acknowledge its binding force, but sets up its acts as paramount to your charter; therefore we do not hold it to be the fundamental law of the colony. Still the most material of the legislative acts mentioned and relied upon to show that the charter has not been held to control the action of the legislative body organized under it were passed within three years after the date of the charter, and more than a century before those to whom it was granted ceased to be the subjects of the crown from which the grant was made. Can stronger evidence be required to show that these acts were never considered as violations of the spirit and meaning of the charter, either by the sovereign who granted or by the people who accepted and adopted it as their system of civil government? It would seem to the undersigned that this view of the subject must be conclusive against the interpretation given to these acts by the majority of the committee. He cannot, therefore, in any light in which he has been able to view the question, believe there is evidence to authorize the assumption that this charter of Charles II has not ever been, and is not now, considered by the people of Rhode Island as their constitution of government to the full extent of its provisions in their true spirit and meaning, with the single exception of those portions of it which were made obsolete by the American Revolution. On the contrary, the evidences are clear and strong to his mind to show that it has ever been held to be the fundamental law of that State by its people, its government, and its legislature (the act of January, 1832, alone forming a material exception),

and he refers to the present basis of representation in the popular branch of the legislature, and to the present mode of conducting the elections for general officers, as conclusive of the question.

This brings the undersigned to his second inquiry, to wit: Does the charter fix and prescribe the term of office of the governor, lieutenant-governor, and senators of the State?

The language of the charter itself must settle this point. The whole of the paragraph has been quoted in the statement of facts given in the early part of this report, and a reference to that extract will show its requirement to be, "that yearly, *once in the year, for ever hereafter*, namely, the aforesaid Wednesday in May," "the governor, deputy governor, and assistants of the said company," "shall be" "*newly chosen for the year ensuing.*" It is respectfully submitted that this language is definite and clear; that the term of one year is fixed by it as the period of service, or official term, of the governor, lieutenant-governor, and senators of Rhode Island, by virtue of an election by the people to those offices, and that it does not admit of extension by any fair construction of the terms used or the meaning conveyed. Is there, then, anything in the charter to modify this construction of this provision? The majority of the committee seem to suppose there is, as in reference to this subject they use the following language: "It seems, on the contrary, to have been the intention of the crown to perpetuate the existence of the legislative power in the colony by an express provision that the authority, office, and power of the governor, deputy governor, and assistants shall cease and determine when their successors shall be elected and engaged, and not at the expiration of the term for which they were respectively chosen." The undersigned believes, had the majority of the committee extracted the passage of the charter to which they must have referred for the above opinion that they would have seen its want of applicability to the question they were discussing. The passage is considered as solely applicable to cases of removal from these offices by death or for cause, and not to vacancies occasioned in any other manner. As, however, the majority of the committee have seemed to consider it as susceptible of a different construction, the undersigned feels bound to give it to the Senate, that it may form its own opinion of its extent and application. It is in the following words: "And if it shall happen that the present governor, deputy governor, and assistants, by these presents appointed, or any such as shall hereafter be newly chosen into their rooms, or any of them, or any other the officers of the said company shall die, or be removed from his or their several offices or places before the said general day of election (whom we do hereby declare, for any misdemeanor or default, to be removable by the governor, assistants, and company, or such greater part of them, in any of the said public courts to be assembled as aforesaid), that then, and in every *such* case, it shall and may be lawful to and for the said governor, deputy governor, assistants, and company aforesaid, or such greater part of them, so to be assembled as is aforesaid, in any of their assemblies, to proceed to a new election of one or more of their company, in the room or place, rooms or places, of such officer or officers, *so dying or removed*, according to their discretions; and immediately upon and after such election or elections made of such governor, deputy governor, assistant, or assistants, or any other officer of the said company, in manner and form aforesaid, the authority, office, and power before given to the former governor, deputy governor, and other officer or officers *so removed*, in whose stead and place new shall be chosen, shall, as to him and them, and every of them respectively, cease and determine."

A careful examination of this clause of the charter will show that it first contemplates a vacancy in the office of governor, deputy governor, or an assistant by death, or, second, by removal from office, which, "for any misdemeanor or default," it authorizes; and, in either case, it empowers the legislature to make an election to fill the vacancy so occasioned; and then declares that, after such election is made, "the authority, office, and power" of the officer "removed" shall "cease and determine." This is the whole scope of the provision, and the majority of the committee must, therefore, have been mistaken in supposing that it was applicable to a case of vacancy in any of these offices occasioned by a failure of the people to elect. It applies solely to elections made by the legislature; and there is no authority given by the charter to the legislature to fill a vacancy in the office of governor, deputy governor, or an assistant, occasioned in any other manner than by the death of the incumbent, or his removal from office for some "misdemeanor or default."

The undersigned finds no other provision in the charter which can, to his understanding, be possibly supposed to have any application to the official terms of the governor, lieutenant-governor, and senators; and as he cannot suppose the clause last above quoted and referred to can be understood as reaching any cases other than the two classes of cases he has mentioned, to wit, the death of the incumbent, and his removal from office for cause, he is forced to the conclusion that the charter does limit the term of office of the governor, lieutenant-governor, and senators to one year, "the year ensuing" the

pronunciation of their election in the general assembly convened at Newport; and that there is nothing in the other provisions of that instrument to qualify this limitation.

Can, then, the legislature of the State, consistently with the powers granted to that body by the charter, extend the official terms of those officers beyond the limits fixed by the charter?

This inquiry would seem to have been already answered; for, if it be admitted that the charter is the fundamental law of the State, and, as such, binding upon its legislature, and that it does fix the official terms of the governor, lieutenant-governor, and senators at one year, it must follow that an extension of those terms beyond the period fixed by the charter would be an act of legislation above and beyond the charter in a case where it makes express provision, and, therefore, an act of legislation not authorized by the charter, but in direct violation of it. Such are the impressions fully entertained by the undersigned; but it is his duty to notice some of the positions by which the majority of the committee sustain themselves in an opposite conclusion.

It will at once be seen that this discussion involves the constitutionality and validity of so much of the act of January, 1832, as extends the terms of office of the governor, lieutenant-governor, and senators in case of a failure to elect by the people, and therefore has direct reference to the arguments by which the majority of the committee sustain that act.

The first position, in order, taken by the majority of the committee, which it is proposed to notice, is laid down in the following words: "Your committee hold it to be an undeniable principle, applicable to all forms of government, that there must exist in the supreme legislative power of the State a capacity to preserve itself from annihilation."

This is a position to the soundness of which the undersigned cannot subscribe as applicable to any of the forms of government adopted by any of the States of this Union, or by the Federal Government. He supposes Congress to be "the supreme legislative power" of this Government, but Congress has by the Constitution of the United States no capacity to preserve itself from annihilation. If the people should fail to elect members to the House of Representatives, or if the legislatures of the States should fail to elect members to the Senate, there would be no Congress, nor could Congress itself continue itself beyond the terms for which its members have been elected, or in any other way, by its action, bring a new Congress into existence. Congress, therefore, which is the supreme legislative power of the United States, has not the capacity to preserve its continued existence, or to prevent its own annihilation.

The undersigned, from the time allowed him to prepare this report, has not been able to examine very extensively the constitutions of the several States, nor have his former researches made him familiar with the minute provisions of those instruments; but from the examinations he has been enabled to make he entertains the opinion that no such power is conferred upon any one of the legislative bodies organized by those instruments as that of continuing itself in official existence, by its own act, beyond the term for which its members were elected. He believes that the members of the legislatures of all the States are elective by the freemen of the respective States, and in the constitutions of some no provision is made for a failure by the people to elect, and no mode of remedying such failure but that of a resubmission to the people has ever been attempted by the legislatures of those States. The constitutions of other States provide for filling the vacancies which may exist from failures to elect by the choice of such of the members of one or both branches of the new legislature as may have been elected, generally confining that choice to a certain number of the candidates voted for by the people for the office to be filled. Other States, where legal quorums are elected, suffer the vacancies occasioned by a failure to elect to remain unfilled until another regular election. There may be cases where the constitution of a State provides that the members of the old legislature shall continue to act until others are elected and qualified to fill their places, but the undersigned has been able to find no such case; nor does he believe that one exists. He believes that the constitution of every State fixes definitely the length of the official term of the members of its legislature, and that without a re-election by the people, or some other re-election or reappointment prescribed by the constitution of the State, the official powers of every member of the State legislatures cease with the close of the term for which he was elected, whether any other person be or be not qualified to discharge the same duties.

Surely, in the first class of the above cases, where the State constitution makes no provision for a failure to elect, and a new election is the only remedy within the power of the legislature, "the capacity to preserve itself from annihilation" does not exist in the legislature, the official terms of the members of which have expired. That capacity is in the people alone, and their election must determine the continuance or not of the legislative power.

In the second class of cases, where vacancies occasioned by a failure to elect are to be filled by such members of one or both branches of the new legislature as may have been

elected, the capacity may exist in each legislature to preserve itself but not its succession; and even this must depend upon the success of the people in electing a portion of the members; for if there should be a failure to elect the whole, or if the people should hold no election, there would be no one authorized to fill vacancies, and annihilation would follow. Such a legislature, therefore, has only *sub modo* the "capacity to preserve itself from annihilation," and has not at all that capacity in the sense in which the majority of the committee are understood to use it, to preserve its succession.

The third class, where the constitution of the State authorizes the members of the existing legislature to hold their offices and exercise their powers until others are elected or appointed and duly qualified to take their places, if indeed such a provision exists in the constitution of any one of the States, is still not a capacity which exists in the legislative power to preserve itself from annihilation, but a provision which exists in the constitution of the State to preserve its legislature from annihilation. The power or capacity is constitutional and not legislative, and, therefore, even in this class of cases does not bear out the majority of the committee in the position they have laid down.

The undersigned may have misapprehended the meaning which the majority of the committee intended to give to the position itself, as they may have attached to the terms "supreme legislative power of the State" ideas which, as used, they have not conveyed to his mind. He has considered them as used in reference to the legislative bodies of the United States, and to legislative bodies acting in subjection to fundamental law paramount to the powers of the legislative authority—indeed, from which the legislature derives its authority. If the position has not been taken in this sense, then the undersigned must admit that his replies to it may be a departure from the intention of the proposition; but he must at the same time say that he thinks, in any other sense, the proposition is a departure from the argument it is used to support.

The next position assumed by the majority of the committee to sustain this act of January, 1832, is that neither in the charter nor in the bill of rights, "nor in any other act or instrument now in force, is there to be found any prohibition of the power to continue over an existing legislature until their successors shall be duly chosen and engaged." The reasoning to support this position is that the constitutions of the several States are in the broadest sense popular, and that the legislative power granted by them embraces every object not expressly prohibited by some provision in the instrument itself, or by a bill of rights. In reference to powers legislative in their nature and character, and not enumerated or particularly granted, this reasoning and the deduction from it may be generally sound as applicable to the State constitutions. It is respectfully submitted, however, that the establishment and organization of the legislative bodies, and as a necessary part of that establishment and organization the limitation of the terms of the members is, under our system, a constitutional and not a legislative power, and therefore, not coming within the scope of the reasoning of the committee, cannot be controlled by the conclusion drawn from that reasoning. But in the present case this point is not left to reasoning and inference. We have already seen that the terms of the members of the senate of Rhode Island are specifically fixed by the charter to one year. The constitution has provided for the case in terms, and its grant is positive, definite, and clear. It surely then will not be contended that this term may be extended without a violation of the grant, because the granting clause does not contain a prohibition against its violation. It is a settled rule of construction that an affirmative and positive grant, clear and intelligible in its terms, is itself a negative of what is not granted. The Constitution of the United States fixes the term of a Senator at six years; and it surely would have been considered surplusage in that instrument to have added that the term of a Senator should be no more than six years; nor will it be supposed that Congress can prolong that term because that negative is not affixed to the grant. This position, therefore, cannot sustain the action of the legislature of Rhode Island in attempting by a legislative act to prolong the term of the senators of that State beyond the period limited and prescribed by the fundamental law of the State.

The majority of the committee further contend that the people of the State of Rhode Island sanctioned the act of January, 1832, by holding elections pursuant to its provisions. The undersigned believes that in using this argument the majority of the committee have not taken the proper distinction between the different provisions of that act. It has not been contended, to the knowledge of the undersigned, that those parts of the act which directed new elections in cases of failure to elect at the annual elections were unconstitutional or invalid. On the contrary, he understands that those provisions of the law are insisted upon as valid and binding, and that it is complained that the house of representatives did not carry them into effect according to their plain intent and meaning. It will be found to have been made a distinct point by Mr. Potter in his argument that even supposing all parts of the law of January, 1832, were constitutional and valid, the election of Mr. Robbins to the Senate was improperly made, because if that law had been properly carried into effect there would have been two or three sessions of

the legislature of the State between January, 1833, when that election was made, and the 3d of March, 1833, when his former term expired; while the law of the State regulating the election of United States Senators requires that election to be made "at the session of the general assembly next preceding the expiration of the term of service of the Senator for the time being, and not before."

His reasoning upon the subject is that it was the intention of that law that elections should be held as frequently as that could be done, the returns made, and the results ascertained, until a choice of governor, lieutenant-governor and senators should be effected; that the law fixed the period of thirty days as the longest notice which should be given of a special election to be held under it; that several of those elections were held upon a much shorter notice, and proved that elections might be held once in thirty days without difficulty; that these elections were continued at intervals differing not very widely from this until the October session of the legislature in 1832; that after that period but one election was held under the law; that at the session in January, 1833, the legislature, instead of adjourning to such a day as would give time for another trial to elect a senate, and so continuing to do from time to time until the law made it imperative upon them to elect a Senator, at any time before or even on the 3d day of March, 1833, then proceeded to make that election, the house of representatives having first resolved that they would order no more elections under the law; that by this proceeding the persons acting as the governor, lieutenant-governor, and senate, under the law of January, 1832, who were elected in April, 1831, without any reference to the election of a Senator, were made actors in that election, and actually gave their votes for Mr. Robbins, by which votes he was elected, when, if new elections had been ordered, as they should have been, other sessions of the legislature would have intervened between January and March, and the people would have had an opportunity to elect a governor, lieutenant-governor, and senate, with a view to the election of a Senator; that the fact that an election was effected at the first trial after November, 1832, proves very clearly that had elections been ordered some choice would have been effected before March, 1833, and before the expiration of the then term of Mr. Robbins; while the total change produced by the election in the governor, lieutenant-governor, and senate proves conclusively that the public will was not represented by the former incumbents of those offices.

These suggestions are given here in as condensed a form as possible, that the Senate may allow them such weight in the decision of this important controversy as this body may think they deserve. They must in any event satisfy the Senate that these elections, held in obedience to the law of January, 1832, furnish no evidence of the acquiescence of the people of that State in any of the provisions of that law other than those applicable to the special elections, the validity of which provisions have not been and are not now disputed. Indeed, from the fact that that law charged the house of representatives alone with the execution of this portion of it, an argument has been drawn that it was not the intention of the legislature which passed the act that any business of an official or legislative character should be performed by the senate after the expiration of their constitutional terms, and that the provisions in the law for the official continuance of the governor, lieutenant-governor, and senators was designed as a mere formal continuance of the legislative body until an election by the people should be effected. The terms of the act, however, as will be seen by a reference to it, go very strongly to contradict this construction of it.

Another position taken by the majority of the committee to sustain the validity of the act of January, 1832, is based upon the action of the supreme judicial court of the State of Rhode Island. The paper annexed, marked O, contains the evidence of the proceedings referred to. The facts seem to be that a person by the name of Miner was indicted in September, 1832, for murder; that he was tried in March, 1833, before this court, convicted, and sentenced to be hung in July, 1833. He presented to the court an application for a habeas corpus, upon the ground that the judges had not been appointed by a competent legislature, and were not, therefore, empowered to try and sentence him. The court refused the application, but the grounds of the decision are not stated. It is contended that this decision was a pronunciation of the judgment of that court in favor of the validity of the law of January, 1832. Mr. Potter makes two answers to this point. The first is that the statute of the State expressly denies to this court the authority to grant a habeas corpus on the application of persons "committed for a capital crime," "or persons convict" (see the Revised Laws of Rhode Island of 1822, page 181). To this it is replied, as it would seem to the undersigned, with much force, that notwithstanding the prohibition of the statute it would be competent for the court to examine such an application where the allegation was that the whole proceedings had been *coram non judice*, and, if such should, in their judgments, be the fact, that the case would not come within the prohibition of the statute and the writ might be granted. The second answer is that the judges of this court were the same persons from the first Wednesday in May, 1831, until the first Wednesday in May, 1833; that it is admitted on all hands

that their appointments and terms of service were within the power of the legislature, though the practice has been to make the appointments annually; that these judges were properly appointed and commissioned in 1831; that a resolution having the force of a law is always passed by every legislature of Rhode Island declaring that all officers in whose places no others have been appointed by the legislature or who have not been themselves reappointed shall continue to hold their respective offices until others shall be duly appointed and qualified to take their places; that a similar resolution was passed by the legislature in office from May, 1831, to May, 1832; that these judges did hold their offices and continue to discharge their duties as judges by virtue of their appointment in 1831, and of the resolution above described until August, 1832, although their year expired in the month of May, 1832; that the body acting as the legislature in August, 1832, but whose right so to act is now disputed, did in that month assume to reappoint these judges, but it is said that if it shall be determined that this body was not the legislature of the State authorized to perform the constitutional duties of the legislature of the State, then their assuming to reappoint these judges would neither add to nor take from the powers they possessed before that act was performed; that they were continuing in office at the time by virtue of the resolution before mentioned; that they would so continue until removed from office or reappointed by a constitutional legislature; and that therefore their decision in the case referred to does not necessarily carry with it the decision of that court in favor of the validity of the act of January, 1832, because if they had decided expressly that that law was invalid and their purported reappointment in August, 1832, void, they would still have been compelled to decide that they were in office by virtue of the resolution of the previous competent legislature as well after as before August, and, being so in office, were a competent court to try and sentence the criminal in question. This reasoning seems to the undersigned to follow necessarily from the facts, and to render wholly inconclusive this action of the court as a decision in favor of the validity of the law under consideration.

The legislature which declared void the election of Mr. Robbins and elected Mr. Potter, in the preamble to the act making that declaration denominate the body which made the election of Mr. Robbins "the general assembly," and assign as the ground upon which they declare void their proceedings in that particular the non-compliance with the act of January, 1832. The majority of the committee consider this an admission sustaining the validity of that act. This same legislature also, at their first session, repealed the act of January, 1832, without expressing any opinion in the repealing act that the act to be repealed was not valid. This the majority of the committee also consider an admission to the same effect. How far admissions by this subsequent legislature, if made, would render valid an unconstitutional law passed by a preceding legislature, or how far such admissions are to be considered evidence of the constitutionality of such a law, when that is the point in issue, are questions which the undersigned leaves to the determination of the Senate. These admissions, however, appear to him to have been made, so far as they can be considered admissions at all, under circumstances which should be considered. The Legislature of Rhode Island, at its October session, in the year 1833, pass an act in which they declare the election of Mr. Robbins to the Senate "to be null and void, and of no effect," and that the office of Senator is vacant; not that the office is thereby vacated, but that it is "vacant." To that act they affix a preamble, in which they term the body of men which made the election that they are about to declare void "the general assembly," and accuse them of a non-compliance with the law by virtue of which they held their offices; and this preamble is followed by the law which declares null and void the act referred to. Now, it would not do to assume that anything contained in this preamble was designed as an admission of the validity of the election of Mr. Robbins, because it was the sole object of it, and of the law to which it is the preamble, to declare that election void; and it will not be contended that the preamble to any legislative act is to be so construed as to contradict, defeat, and overrule the act itself, which is the only part of the proceeding having validity. This legislature, then, did not intend to admit that Mr. Robbins had been validly elected to the Senate of the United States, but to deny that fact, and to declare not *voidable* but *void* the proceeding by which he purported to have been so elected; and the preamble to the act must be so understood and construed as to be consistent with this intention. Two grounds were assumed upon which that election was void: 1st. That the law of January, 1832, so far as it purported to continue the terms of office of the governor, lieutenant-governor, and senators, was in direct violation of the constitution of the State, and therefore void, and that the persons assuming to act as a governor and senate in the election of Mr. Robbins were not constitutionally a governor and senate, and were not authorized so to act. 2d. That the governor and senate for the time being held their offices, not by virtue of an election by the people, but by virtue of the act of January, 1832, and that a failure to comply strictly with the provisions of that act had put an end to the powers they derived from it, and therefore

that they had no power to act in the election of a Senator. The subsequent legislature appear from this preamble to their act to have assumed the latter ground as the foundation of their action, and anything in the shape of an admission in the preamble would seem to be properly referable to the views they entertained, and upon which they were acting, and not to connect itself with a view of the subject which does not appear from their proceedings to have influenced their action. If, therefore, the ground assumed by this legislature should be held to be untenable, and the ground first above mentioned, to wit, that the act of January, 1832, so far as it purports to extend the official terms of the governor, lieutenant-governor, and senators, is in direct violation of the constitution of the State, and therefore void, be well taken, the undersigned is unable to discover that anything in the admissions supposed to be contained in this preamble can weaken or overturn it. In reference to the admission supposed to be drawn from the silence of the act repealing the act of January, 1832, the undersigned will simply remark that this was an act to repeal a law parts of which were held to be unconstitutional and void, and other parts of which were admitted on all hands to be valid and binding as law; and under these circumstances he cannot consider the absence of a declaration pointing out those parts which were held to be unconstitutional, inasmuch as it was the object of the legislature to repeal the whole act, as going very far to sanction the whole act.

The majority of the committee mention the action of the legislature of Rhode Island in relation to the election of members of Congress and the introduction of the plurality instead of the majority of votes to elect in the choice of those officers as going to show the extent to which the legislature have gone in regulating elections, contrary to the long-established customs of the State. Two remarks may be made in relation to this argument. The first is, that the charter could not necessarily have contained any provision in relation to the election of these officers, inasmuch as it was granted for the government of a British colony, and not of the State of Rhode Island as a member of the confederacy of States composing this Government, and was granted more than a century before such a thing as a Congress of the United States of America was known or had existence; whence, from necessity, the legislature must have full power over that whole subject. The second is, that the fact that the legislature of Rhode Island extended, by law, the plurality mode of election to the choice of members of Congress where the charter does not interfere, and did not extend it to the election of officers of the State government where the charter prescribes the majority principle, affords at least as strong an inference in favor of their sense of the binding and paramount influence of the charter, where it does direct, as of any disposition to treat it lightly by disregarding the mere analogy when acting upon a case not known to the charter.

So much for the arguments which have been adduced by the majority of the committee to sustain the validity of the act of January, 1832.

In corroboration of the point now under discussion, however, to wit, that the terms of the governor and senate can be continued beyond the year, the majority of the committee assume that these officers always have held over until the election was completed and their successors qualified. A perfect understanding of the facts, it is believed, will make this point plain. From the statments of the parties annexed, and before referred to, it is to be seen that the practice of the legislature of Rhode Island has ever been to adjourn to meet on the day previous to that fixed in the charter for the annual election, and that pursuant to such adjournment, a quorum of both houses assemble on that day always at Newport, the place named in the charter for holding the annual elections. It is undoubtedly true, as the majority of the committee remark, that when the people all assembled and voted at that place they might remain together until an election was effected, and that the governor and senate of the former year might remain until that result was ascertained, but there is not found any provision in the charter making them at that time presiding officers of the election or imposing upon them any other official duties after the opening of the election. The new house of representatives always assembled on the day fixed for the election, and took the oaths of office on that day. They always acted as the canvassers of the votes, and the result of the election was declared by that body. Since the system of voting by proxy, as before described, has been adopted, the proxies have always been returned to Newport and canvassed by the new house of representatives, as the votes given by the people there assembled formerly were. They declare the result as they formerly did, and the election is closed. If a governor, lieutenant-governor, and senate are found to be elected, the persons elected are sworn, and the legislature is organized; and as an election of a governor, lieutenant-govenor, and a quroum of the senate has never failed to be made until the first Wednesday in May, 1832, the history of the government of the colony and State furnishes no precedent for such a case as that under consideration, where the former governor, lieutenant-governor, and senators, or any of those officers, have held over and attempted to perform official acts because successors were not elected. That history does, however, present several instances where the whole number of senators have not been elected and no attempt has been made to fill the vacancies by a new election, or in any other

manner, nor have the former incumbents of the vacant seats ever claimed to hold over the terms for which they were elected, but the vacancies have in all such cases been suffered to remain for the year. It should be further remarked that no evidence is found to show that any election has occupied more than the day fixed in the charter, so that any presumption of a holding over of these officers in consequence of a failure to elect on that day is unsupported by evidence.

From these facts it would seem to the undersigned to follow necessarily that the old governor and senate are brought together by the adjournment of the legislature to the day previous to the election; that subsequent to that day, unless re-elected, they have never had any official duty to perform, and have never performed any; that the right to hold over, in case of a failure to elect, had not been admitted in the practice of the government under the charter, because repeated instances have happened where failures to fill places in the senate have occurred and the incumbents have not continued to occupy them, but they have remained vacant for the whole year; that the holding over referred to by the majority of the committee has relation only to the day of election, and then these officers, unless re-elected, have no official duties to perform; and that, therefore, the holding over of the governor, lieutenant-governor, and senators of that State from the first Wednesday in May, 1832, to the first Wednesday in May, 1833, in consequence of a failure of the people to elect, was not sanctioned by any former practice of the government under the charter, and must be held to have been done by virtue of and in obedience to the act of January, 1832, and not by virtue of any provision in the charter or in conformity with any former precedent.

The opinion of the undersigned as to the validity of such of the provisions of that law as assumed to extend the official terms of these officers has been given in his remarks under the two first heads of this report, where it will be seen that he has come to the conclusion that the charter is to be regarded as to this question as the fundamental law of the State, binding upon its legislature, and that it does limit specifically their official terms to one year.

As it has been intimated in some one of the statements of fact that the duty of swearing the new governor, lieutenant-governor, and senators devolved upon the old officers as an official act to be performed by them after the election had been effected, it may be proper to refer here to the paper annexed, marked P, to show that, for a long term of years at least, this duty has been performed by the secretary of state, and not by them.

This brings the undersigned to his fourth inquiry, which is: Can the Senate of the United States, when these questions are presented to it by the action of the legislature of the State of Rhode Island, in the purported election of a member for this body, look into and pronounce its opinion upon them by way of inquiry into the right of a sitting member to the seat he occupies?

Two bodies of men, calling themselves the senate and house of representatives of the State of Rhode Island, and together acting as the legislature of that State from the first Wednesday in May, 1832, to the first Wednesday in May, 1833, did, in January, 1833, assume to elect Asher Robbins to the Senate of the United States for the term of six years from and after the 3d day of March then next, to fill a vacancy to be produced by the expiration of his then term of office on the last-mentioned day. Mr. Robbins received a majority of the votes given by these two bodies of men for the office, and the election was conducted according to the forms pursued by the legislature of Rhode Island in the election of Senators. The result of the election was pronounced in the usual manner, and the person acting as governor of the State at the time issued to Mr. Robbins a commission in the usual form, and authenticated in the usual manner, for the office. This commission was presented to and read in the Senate of the United States on the 4th day of February, 1833, and placed upon the files of that body.

This election of Mr. Robbins was protested against by several members of the house of representatives of that State soon after it was made (see protest annexed, marked Q), and has ever since been alleged to have been void, on the ground that the persons acting as the governor, lieutenant-governor, and senators of the State at the time of the election, and aiding in making it, were not constitutionally the governor, lieutenant-governor, and senators of the State, nor authorized to perform that act, and, of consequence, that the person acting as the governor of the State, and as such signing Mr. Robbins's commission, was not constitutionally the governor of the State, nor authorized to perform that act. In the month of October, 1833, two other bodies of men, admitted to be the senate and house of representatives of the State of Rhode Island, were assembled and constituted the legislature of that State, and while so assembled this legislature passed the law to be found annexed to the report of the majority of the committee, and marked A, declaring the election of Mr. Robbins "null and void, and of no effect," and the office to be "vacant." This same legislature then proceeded to elect a Senator to fill the vacancy which they alleged existed by the expiration of Mr. Robbins's former term in March previous, and, upon counting the votes given, Elisha R. Potter was found to have

received a majority of the whole, and was declared to have been duly elected. The election was conducted in the usual manner, and the person admitted to be the governor of the State issued to Mr. Potter a commission for the office in the usual form, and with the proper authentications. This commission was presented to the Senate of the United States and read in that body on the first day of its present session, and at the same time Mr. Robbins and Mr. Potter both presented themseves at the bar, and each offered to take the oath of office as a Senator of the United States from the State of Rhode Island.

This is believed to be a sufficient summary of the facts to present this point intelligibly to the Senate. It will be seen from them that the question is raised upon the action of a body admitted on all hands to have been a constitutionally organized legislature of the State of Rhode Island, declaring "null and void, and of no effect," an important act of a preceding body claiming to be the legislature of that State, but the organization of which was peculiar, and the constitutionality and legality of whose acts are questioned.

The Senate, by the Constitution, is made "the judge of the *elections*, returns, and qualifications of its own members," and can it, under this power, look into these facts to determine which of the persons claiming the seat as a Senator from Rhode Island is entitled to represent that State in this body?

No question appears to the undersigned to be raised as to the "returns" or "qualifications" of either of the claimants, and he therefore considers that the question of "election" is the only one presented for decision. This question the Senate has the power to determine, because it is made "the judge of the elections" of its own members. The facts in this case show that the legislature of the State of Rhode Island declare, in the solemn form of a law of the State, that Mr. Robbins has not been elected to the Senate; that the proceedings from which his commisson proceeded were "null and void, and of no effect," because the body taking them were not authorized to elect a Senator; and that the place was "vacant" at the time when this declaration was made. Still, notwithstanding this solemn declaration by a body conceded to be the legislature of the State, Mr. Robbins produces to the Senate, and there is referred to the committee, a commission in due form, according to the laws and the practice of the government of Rhode Island, to show that Mr. Robbins had been duly elected a Senator to represent that State in the Senate of the United States. Will the Senate look behind this commission to determine whether or not it was properly granted? The undersigned believes that it is not only the right but the duty of the Senate to do so. The commission is only the evidence of the election of a Senator, and if the Senate were to limit its inquiries to the proper form and authentication of the commission it would only make itself the judge of the evidence of an election, not the judge of the election itself. The undersigned supposes that the evidence of an election to an office is, in all cases, *prima facie* only, and is susceptible of being controverted and contradicted before a tribunal competent to judge of the election; he therefore supposes that the regularity of the *evidence* of an election may be one thing and that the *election* may be a very different thing; and he concludes that, as the Senate is constituted not the judge of the evidence of the elections of its members only, but "the judge of the elections" of its members, it may and, in all cases of a contested election where the contest does not arise as to the regularity of the evidence simply, should look behind the evidence and into the election itself, that it may determine what it is constituted the judge to determine, the fact of election, or, in other words, that it may determine whether the *prima facie* evidence laid before it is the real evidence of facts or is subject to contradiction by the facts.

The terms of the Constitution would seem to confirm this construction of the powers of the Senate. It is "the judge of the elections, returns, and qualifications of its own members." The "returns" must refer to the commissions or other evidences of election of the members of this body as separate from the "elections" or "qualifications," and of the "returns" the Senate is the judge. Again, the "qualifications" must relate to the age, citizenship, residence, and other personal qualifications of the person elected, and of these "qualifications" the Senate is also the judge, and these are matters to be determined separate from the "elections" and "returns." So also the Senate is the judge of the "elections" of its members as separate from the "returns and qualifications." The three enumerations would seem to be separate subjects, upon each of which the Senate is to judge in the performance of its constitutional duty; and as a judgment upon the returns is made a separate matter from a judgment upon the election, the inference would seem to be irresistible that an examination behind the returns was contemplated, that a judgment upon the election, independent of the return, might be formed.

Against this construction of the constitutional powers and duties of the Senate the majority of the committee interpose objections which are of a consequential character mostly, but which will be considered. The committee say "it would be a dangerous exertion of power to look behind the commission for defects in the component parts of the legislature, or into the peculiar organization of the body for reasons to justify the

Senate in declaring its acts absolutely null and void. Such a power, if carried to its legitimate extent, would subject the entire scope of State legislation to be overruled by our decision, and even the right of suffrage of individual members of the legislature whose elections were contested might be set aside. It would also lead to investigation into the motives of members in casting their votes for the purpose of establishing a charge of bribery or corruption in particular cases."

Reserving for the present the consideration of the extent to which the consequences of adjudging any act unconstitutional, or illegal, or invalid may be properly used as an argument against such an adjudication, the undersigned respectfully suggests that in his judgment the consequences here mentioned do not necessarily follow the decision apprehended. He understands it to be a necessary rule of all legislative bodies empowered to judge of the "elections, returns, and qualifications" of their own members that the person presenting the *prima facie* evidence of membership is allowed to take his seat, and is fully authorized to act until such *prima facie* evidence of right is overruled by the judgment of the body; and he never heard it doubted or questioned that the votes of a member so sitting were as valid for all purposes as the votes of a member whose seat was not contested, and whose right to a seat was not questioned. Indeed, if it were not so the admission of a member to a seat in a legislative body until his election, return, and qualifications had been definitely adjudged would be an absurdity. It would be the admission into the body of a voter who might, by the adjudication of the body itself, vitiate its whole proceedings.

So also in the case supposed by the majority of the committee of alleged bribery and corruption. The undersigned has always supposed that a member of a legislative body who should accept a bribe was punishable for the crime; but he has never understood, nor does he now understand, that the vote of the member given under the corrupt influence vitiated the proceeding voted upon or rendered either void or voidable by legal adjudication such proceeding. The member bribed is still constitutionally and legally a member of the body notwithstanding his corruption, and retains all his rights and all his powers as a member until conviction for the crime ousts him from his seat.

Hence it is concluded that the consequences above enumerated cannot follow the decision involved in the present controversy, whatever that decision may be, as the question presented is not whether the persons who did act as the governor and senate of Rhode Island, or some other persons claiming the right so to act, were the proper persons to discharge the duties of those offices; but the question is, were the persons who did so act constitutionally and legally, even by any *prima facie* claim, the governor and senate of that State, and as such authorized to vote upon the election of a Senator?

Again, the majority of the committee say "such a power does not belong to the Federal Government, and would, if claimed and carried out to its full extent, annihilate all the reserved rights of the States. It is a general principle of national law applicable to all distinct and independent governments, that if there arise any disputes in a state on the fundamental laws and administration, or on the prerogatives of the different powers of which it is composed, it is the business of the state alone to judge and determine them in conformity to its political constitution. No government has a right to intrude into the domestic affairs of another state, and attempt to influence its deliberations, or to control its action."

These principles may be perfectly sound when applied to nations wholly disconnected with and independent of each other; but the undersigned respectfully submits that they cannot be applicable to governments related to and connected with each other, as are the governments of the States of this Confederacy and the Federal Government, of which the States are component parts, and especially when the question is the proper representation of the State in that branch of the Federal Legislature where its sovereignty is represented in the particular manner pointed out by the Federal Constitution. Upon such a question, that instrument, and not the general principles of international law, must govern the decision. We have already seen that the Constitution makes it the duty of the Senate to judge of the "elections" of its members. Another provision of that instrument says "the Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof;" and the question now directly presented is, was Mr. Robbins chosen by the legislature of the State of Rhode Island? It would seem to the undersigned, with all deference to the opinion expressed by the majority of the committee, that the Senate cannot judge of the election of that individual unless it can look into and decide this question, and that to determine this to be an unauthorized interference on the part of the Federal Government in the domestic affairs of the government of the State of Rhode Island would be to determine that the Senate cannot, in the most important point always involved, "judge of the elections" of its own members; that it cannot judge whether or not they were chosen by the legislatures of the States, when the Constitution expressly requires that they should be so chosen.

In this connection, the majority of the committee seem to place much stress upon another argument, entirely consequential in its character, which is, that a decision by the Senate that the body of men who elected Mr. Robbins was not the legislature of Rhode Island will be in effect a decision that all the laws passed by that body, acting as the legislature of that State, and all its other acts performed in that capacity, are null and void. Inasmuch as the State has now, and has had since the first Wednesday in May, 1833, a legislature admitted on all hands to be constitutionally chosen and organized, it would appear to the undersigned that the majority of the committee give an unnecessary importance to this consequence of such a decision in case the consequence must follow; because the evils apprehended, to a very great extent, if not to the entire extent, might be remedied by the action of the competent legislature in affirmance of the acts to be affected. But, however this may be, he cannot but consider it a plain proposition, and not requiring argument to support it, that when the constitutional organization of a body of men claiming to be the legislature of a State is the question in issue, the acts of that body whose constitutional powers are disputed are not to be adduced as evidence of the constitutional power of the body to perform them. When the constitutionality of a legislative act is questioned, he cannot believe that the act itself is to be relied upon as evidence of its own validity. Equally clear is it to his mind that when such a question is to be determined the consequences of pronouncing the act invalid are not considerations which should legitimately control the decision. The act is either constitutional or unconstitutional. If constitutional, the dispute is settled; if unconstitutional, no consequences to follow from a pronunciation of that fact can make it valid. So with the body claiming to be the legislature of a State. If the legislature of the State according to the provisions of its constitution, the controversy is at an end; if not the legislature of the State, no acts of theirs in their assumed character, and no consequences to follow from the invalidity of those acts, can give them the powers which they had not when the acts were performed, or make them, what they were not, the legislature of the State. But if consequences can be legitimately considered in the argument, the undersigned feels compelled to say that to his mind a decision that the State of Rhode Island has no fundamental law or constitution of government but the will of its legislature will be a consequence to its people much more serious than any which can be apprehended from pronouncing void the acts of the body of men assuming to be the legislature of the State from May, 1832, to May, 1833.

The undersigned then concludes that the charter of Charles II granted to the colony of Rhode Island and the Providence Plantations (now the State of Rhode Island) in the year 1663, and submitted to and adopted by the people of the colony in the year 1663 and 1664, is now to be considered the fundamental law of the State of Rhode Island, and binding upon its legislature as a constitution of government, except so far as the provisions of that charter were rendered obsolete by the American Revolution; that that charter does fix, and specifically limit, the official terms of the governor, lieutenant-governor, and senators of the State to one year; that the legislature of the State have not the power to extend those official terms beyond that limit; and that the Senate, upon a question as to the election of a Senator, has the right to inquire whether he was chosen by the legislature of his State, and, consequently, whether any body of men assuming to choose a Senator were authorized, as members of the legislature of their State, to make the choice under the provisions of the constitution of such State.

It being conceded that the official terms of one year of the governor, lieutenant-governor, and senators of Rhode Island had expired in May, 1832, and that they continued from that period until May, 1833, to act in those offices, respectively, without any new election by the people, the undersigned is compelled to conclude that they acted during that period without constitutional authority, and that they were not, after May, 1832, members of the legislature of that State, and were not, therefore, in January, 1833, when they did so act, empowered to vote in the choice of a senator to represent that State in the Senate of the United States. And inasmuch as the Constitution requires either a governor, or lieutenant-governor, and at least six senators to constitute, with the house of representatives, a legislature; and as there were no such officers in constitutional existence in the State of Rhode Island in January, 1833, when Mr. Robbins purports to have been chosen a Senator, he is brought to the further conclusion that that choice was not made by the legislature of the State.

Has, then, Mr. Potter been validly elected a Senator from that State? That the body by which he was chosen was the legislature of the State has not been questioned; but in speaking upon that point the majority of the committee express the opinion that that legislature had no "authority to proceed to the election of another Senator until the seat of the Senator-elect had been vacated by a solemn decision of the Senate of the United States." If, speaking legally and constitutionally, there was a Senator-elect, then this opinion is unquestionably sound, as it will not be contended that any legislature of a State has the power to vacate a seat in the Senate. To be more explicit and intelligi-

ble, if Mr. Robbins's election was *voidable* only, and not *void*, a subsequent legislature could not act until the vacancy was produced by the decision of the Senate. But if, as the undersigned has expressed his opinion, the election of Mr. Robbins was not made by the legislature of the State, then it was not *voidable*, but *absolutely void;* it was not an election within the requirement of the Constitution of the United States, and the vacancy existed from the expiration of his former term in March, 1833. If the Senate shall come to this conclusion, then the undersigned is not aware of any ground upon which it can be contended that any constitutionally organized legislature of the State had not the power to fill that vacancy, or that the election of Mr. Potter made by such a legislature in October, 1833, is not valid.

All which is respectfully submitted.

SILAS WRIGHT, JR.

[The documents annexed to the minority report are here omitted.]

[Twenty-eighth Congress—First session.]

JOHN M. NILES,

Senator from Connecticut from December 21, 1835, *till March* 3, 1839, *and from May* 16, 1844, *till March* 3, 1849.

Mr. Niles was elected to the Senate for the term beginning March 4, 1843. His credentials were not presented until April 30, 1844, when the Senate resolved that they be referred "to a select committee, consisting of five members, who shall be instructed to inquire into the election, return, and qualification of the said John M. Niles, and into his capacity at this time to take the oath prescribed by the Constitution of the United States." Some members of the Senate doubted the constitutional power of the Senate to make such an inquiry. May 16, 1844, the committee reported that he had been duly elected, and that they "are satisfied that Mr. Niles is at this time laboring under mental and physical debility, but is not of 'unsound mind' in the technical sense of that phrase; that the faculties of his mind are subject to the control of his will, and there is no sufficient reason why he be not qualified and permitted to take his seat as a member of the Senate." They reported the following resolution: "*Resolved*, That the Hon. John M. Niles be permitted to take the oath of a Senator in the Congress of the United States, and to take his seat as a member of the Senate." The resolution was adopted.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 1st sess. 28th Cong., and the report of the committee copied from the original on file at the office of the Secretary of the Senate.

The debates are found on pages 564, 565, 602, 603 of the Congressional Globe, 1st sess. 28th Cong., vol. 13, part 1.

TUESDAY, *April* 30, 1844.

Mr. Fairfield presented the credentials of the Hon. John M. Niles, elected a Senator by the general assembly of the State of Connecticut for the term of six years commencing the 4th day of March, 1843; which were read.

Mr. Jarnagin submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the credentials presented to the Senate of the election of John M. Niles to be a Senator of the United States from the State of Connecticut be referred to a select committee, consisting of five members, who shall be instructed to inquire into the election, return, and qualification of the said John M. Niles, and into his capacity at this time to take the oath prescribed by the Constitution of the United States."

On motion by Mr. Jarnagin,

Ordered, That the said committee be appointed by the President *pro tempore;*

And Mr. Jarnagin, Mr. Benton, Mr. Berrien, Mr. Wright, and Mr. McDuffie were appointed.

THURSDAY, *May* 16, 1844.

Mr. Jarnagin, from the select committee to whom the credentials of the Hon. John M. Niles were referred, submitted a report, accompanied by the following resolution:

"*Resolved*, That the Hon. John M. Niles be permitted to take the oath of a Senator in the Congress of the United States, and to take his seat as a member of the Senate."

The Senate proceeded to consider the resolution; and having agreed thereto,

The oath prescribed by law was administered to the Hon. John M. Niles, and he took his seat in the Senate.

REPORT OF COMMITTEE.

IN THE SENATE OF THE UNITED STATES, MAY 16, 1844.

Mr. Jarnagin made the following report:

The select committee, to whom was referred the credentials of the Hon. John M. Niles, to be a Senator of the United States from the State of Connecticut, with instructions to inquire into the election, return, and qualifications of the said John M. Niles, and into his capacity at this time to take the oath prescribed by the Constitution, have performed the duty assigned and present the following report:

In the month of May, 1842, the Hon. John M. Niles was duly elected a Senator from the State of Connecticut in the Congress of the United States for the term of six years from the 4th of March, 1843. The committee are satisfied his election, return, and qualifications are legal and sufficient, and that it remains to inquire into his capacity at this time to take the oath prescribed by the Constitution. In prosecuting this inquiry the committee addressed a note to Mr. Niles requesting an interview with him, which was

promptly given. Between him and the committee there have been full, free, and frank conversations. Mr. Niles gave so satisfactory an account of his afflictions and present condition as to render a resort to other evidence unnecessary in the opinion of the committee. He has long been laboring under severe bodily afflictions, which, as was natural, impaired the energies of his mind to such an extent that it was deemed proper to remove him to a retreat at Utica, in the State of New York, of which he remained an inmate till about the 1st of April, 1844. His visitations were greatly alleviated, but he felt he had not physical ability to discharge the duties of a Senator for some time after the commencement of the present session of Congress, and a strong aversion to being an obstacle in the way of a full representation of his State in the Senate, but his inclinations were yielded to what was thought the better judgment of his friends, in obedience to which he repaired to Washington to take his seat in the Senate about the 1st of April last, but felt unable to do so till the 30th of that month, when he presented himself to be qualified as Senator. As evidence of the propriety of the course pursued, Mr. Niles presented to the committee the following letter of Dr. A. Bingham:

"ASYLUM, UTICA, *April* 24, 1844.

"Hon. JOHN M. NILES:

"MY DEAR SIR: Your letter has been received and read with much satisfaction. I perceive you are improving, and that it requires but a little more time, warm weather, and exertion on your part, with some urgency of friends, to restore you to health. Though you have been greatly afflicted with sickness, I trust you will call to mind that you have been no more so than thousands of others who have perfectly recovered. To effect your restoration now, my dear sir, requires that you engage in some active duties. You are in the condition that the distinguished Robert Hall was for a while, and to whom his friend Sir James McIntosh, who was educated a physician, gave the following advice, the advice that I give to you now, and urge you to follow it: 'The remedy,' says he, 'in your case is prescribed by the plainest maxims of duty—*you must act*. Inactive contemplation, or lamentation, is a dangerous condition for minds of profound moral sensibility.' Let me therefore urge you to resume your seat in the Senate as an act of duty and a resource against disease. Such exercise is necessary for your health, and by it you may also serve others.

"Please show this letter to your brother, and perhaps to other friends, to whom I wish to say that a peculiarity of your nature is, even when well (so great is your caution), to require a little urging. I hope, therefore, they will not fail to discharge their duty now in urging you to this course. I hope in a few days to hear you are daily engaged for an hour or two in the Senate"

The committee are satisfied Mr. Niles is at this time laboring under mental and physical debility, but is not of "unsound mind," in the technical sense of that phrase; that the faculties of his mind are under the control of his will; and they see no sufficient reason why he be not qualified and permitted to take his seat as a member of the Senate, and they most cordially unite with Dr. Bingham in the hope that such a course will be the means of usefulness and a resource against disease.

Resolved, That the Hon. John M. Niles be permitted to take the oath of a Senator in the Congress of the United States, and to take his seat as a member of the Senate.

[Special session of Senate, March, 1849.]

JAMES SHIELDS,

Senator from Illinois from March 6, 1849, *till March* 15, 1849, *and from December* 3, 1849, *till March* 3, 1855.

Mr. Shields, an alien by birth, was elected to the Senate January 13, 1849, for the term of six years from the 3d of March following. March 6 the oath was administered to him, and his credentials referred to a select committee. The committee reported that it appeared that he was naturalized on the 21st day October, 1840, and reported the resolution "that the election of James Shields to be a Senator of the United States was void, he not having been a citizen of the United States the term of years required as a qualification to be a Senator of the United States." The resolution was amended by adding to it the words "*at the commencement of the term for which he was elected*," and passed March 15. Mr. Shields was afterward elected for the same term.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 2d sess. 30th Cong., 1848–'49. The debates on the case are found in the Appendix to the Congressional Globe, 2d sess. 30th Cong., vol. 20, 1848–'49, pages 326–351, special references to which are inserted below.

FRIDAY, *March* 2, 1849.

Mr. Douglas presented the credentials of the Hon. James Shields, chosen a Senator by the general assembly of the State of Illinois for and during the term of six years from and after the 4th day of March, A. D. 1849; which were read.

MONDAY, *March* 5, 1849.

The Hon. James Shields, whose credentials were read the 2d of March, appearing for the purpose of being qualified,

Mr. Walker submitted the following resolution; which was read:

"*Resolved*, That the certificate of election of the Hon. James Shields to a seat in this body be referred to the Committee on the Judiciary, with instructions to inquire into the eligibility of the said James Shields to a seat in the Senate of the United States as a member thereof."

The Senate proceeded to consider the resolution by unanimous consent.

Ordered, That the further consideration thereof be postponed until to-morrow.

TUESDAY, *March* 6, 1849.

On motion by Mr. Douglas, the oath prescribed by law was administered to Mr. Shields.

[On Mr. Douglas's motion a debate ensued on the question whether Mr. Shields's credentials were such *prima facie* evidence of the necessary qualifications to a seat in the Senate as entitled him to be at once sworn, or whether they should be first referred to a committee; which debate is found on pages 327–329 of the Congressional Globe referred to in the head-note.]

The Senate proceeded to consider the resolution submitted yesterday by Mr. Walker in relation to the credentials of the Hon. James Shields; and, having been amended, it was agreed to, as follows:

"*Resolved*, That the certificate of the election of the Hon. James Shields to a seat in this body be referred to a select committee, consisting of five members, with instructions to inquire into the eligibility of the said James Shields to a seat in the Senate of the United States as a member thereof."

[On this amended resolution, offered by Mr. Butler, some remarks were made on the question whether the case should more properly go to the Committee on the Judiciary or to a select committee, which remarks are found on page 330 of the Congressional Globe before referred to.]

WEDNESDAY, *March* 7, 1849.

Resolved, That the standing and select committees for the present special session of the Senate be constituted and appointed as follows, viz:

* * * * * * *

Select committee on the eligibility of the Hon. James Shields as a Senator—Mr. Benton, Mr. Felch, Mr. Webster, Mr. Mason, and Mr. Pearce.

THURSDAY, *March* 8, 1849.

Mr. Walker submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the select committee to inquire into the eligibility of the Hon. James Shields to a seat in the Senate of the United States as a member thereof be authorized to send for persons and papers, and to call to their aid a person authorized to administer oaths, and to take the testimony of such persons as the committee may deem proper, and to procure the proper authentication of any papers or records which the committee may at any time have before it relating to the subject-matter under its consideration."

Mr. Walker presented a copy of the record of naturalization in the case of the Hon. James Shields; which was referred to the said select committee.

REPORT OF COMMITTEE.

TUESDAY, *March* 13, 1849.

Mr. Mason submitted the following report:

The select committee to whom was referred the certificate of election of the Hon. James Shields to a seat in this body, with instructions to inquire into the eligibility of the said James Shields to such seat, report—

That having given due notice to the said James Shields, he appeared before them, and they took the subject into consideration.

They further report that the said certificate of election declares that the said James Shields was chosen a Senator of the United States by the legislature of the State of Illinois on the 13th day of January last; that it further appears, and is admitted by the said James Shields, that he is an alien by birth, and the only proof before the committee of the naturalization of the said James Shields in the United States is contained in the copy of a certificate of naturalization in the circuit court of Effingham County, in the said State of Illinois, which is annexed to and made part of this report; by which certificate it appears that the said James Shields was admitted by said court a citizen of the United States on the 21st day of October, 1840.

The committee therefore report the following resolution:

"*Resolved*, That the election of James Shields to be a Senator of the United States was void, he not having been a citizen of the United States the term of years required as a qualification to be a Senator of the United States."

Ex parte James Shields.

This day personally appeared in open court James Shields, and made and filed the following declaration:

James Shields, being duly sworn in open court, declares on oath that he was born in the county of Tyrone, in the kingdom of Ireland, on the 17th day of May, about the year 1810; that he emigrated to the United States of America while a minor, and continued to reside in the United States three years next preceding his arriving at the age of twenty-one years, and has continued to reside therein since to the present time; he is now upwards of twenty-one years of age, and has resided upwards of five years within the State of Illinois aforesaid, one of the United States; that it is his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the Sovereign of Great Britain and Ireland; and he further declares that for three years next preceding the present application it has been his *bona fide* intention to become a citizen of the United States.

JAMES SHIELDS.

Subscribed and sworn to in open court, this 21st day of October, 1840.

WILLIAM H. BLAKELY,
Clerk of said Court.

This day personally appeared in open court James Shields, a free white person, upwards of twenty-one years of age, and applied to be admitted to become a citizen of the United States, and who, being duly sworn, declares on oath, in open court, that he will support the Constitution of the United States, and doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatsoever, and particularly of the Sovereign of Great Britain and Ireland, whereof he was born a subject; and the court being satisfied that he has fully complied with the requirements of the laws of the United States on the subject of naturalization, and that he has resided within the United States upwards of five years and within the State of Illinois upwards of one year next preceding this application, and that during the whole of the time of his residence in the United States he has behaved as a man of good moral

character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, it is therefore ordered and adjudged that the said James Shields be admitted a citizen of the United States, and that he is hereby admitted as such.

STATE OF ILLINOIS,
Effingham County, ss:

I, John S. Kelly, clerk of the circuit court in and for said county, certify that the foregoing is a true copy of the record of naturalization in the case of James Shields, entered, as appears upon the record, on the 21st day of October, A. D. 1840.

Given under my hand and private seal (there being no official seal yet provided for said court at Effington) this 31st day of January, A. D. 1841.

[SEAL.] JOHN S. KELLY, *Clerk.*

[Mr. Mason, when he presented the report, made a statement that a communication in writing to the committee from General Shields had, owing to some inadvertence, never reached them, but that he had since seen it, and that it might be seen by Senators; which statement is found on page 332 of the Congressional Globe referred to.]

The Senate, by unanimous consent, proceeded to consider the resolution reported by the committee.

Mr. Foote moved that the further consideration of the resolution be postponed until the first Monday in December next.*

[The debates on the adoption of the resolution and on Mr. Foote's motion are found on pages 333–336 of the Congressional Globe.]

After debate,

Ordered, That the further consideration of the resolution be postponed until to-morrow.

WEDNESDAY, *March* 14, 1849.

The Senate having before it the motion made yesterday, to postpone until the first Monday in December next the resolution in relation to the election of James Shields, a debate ensued, after which Mr. Foote withdrew the motion.†

[The debate on this motion is found on pages 337, 338 of the Congressional Globe.]

The Senate resumed the consideration of the resolution reported by the select committee in relation to the election of James Shields; and,

After debate,

On motion by Mr. Cass that the resolution lie on the table, it was determined in the negative—yeas 15, nays 34.

On motion by Mr. Cass, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bradbury, Cass, Dickinson, Douglas, Downs, Fitzpatrick, Foote, Hale, Hamlin, Jones, Rusk, Soulé, Sturgeon, Turney, and Yulee.

Those who voted in the negative are Messrs. Atchison, Badger, Baldwin, Bell, Berrien, Borland, Bright, Butler, Calhoun, Chase, Clarke, Corwin, Davis of Massachusetts, Davis of Mississippi, Dawson, Felch, Greene, Hunter, Mangum, Mason, Miller, Morton, Norris, Pearce, Phelps, Seward, Smith, Spruance, Underwood, Upham, Wales, Walker, Webster, and Whitcomb.

On motion by Mr. Calhoun to amend the resolution by adding thereto "at the commencement of the term for which he was elected,"

After debate,

On motion by Mr. Hale that the further consideration of the resolution be postponed until to-morrow, it was decided in the affirmative—yeas 24, nays 23.

[The debates on the last two motions are found on pages 338–342 of the Congressional Globe. They include a discussion of the question whether the election of General Shields was *void* or *voidable*, and whether, in case the resolution as amended should pass the Senate, the governor of Illinois would have power to fill the vacancy by appointment.]

On motion by Mr. Douglas, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Atchison, Bell, Borland, Bradbury, Butler, Cass, Chase, Douglas, Downs, Felch, Fitzpatrick, Foote, Hale, Hunter, Jones, Mason, Norris, Rusk, Seward, Soulé, Sturgeon, Turney, Underwood, and Yulee.

Those who voted in the negative are Messrs Badger, Berrien, Bright, Calhoun, Clarke, Cooper, Corwin, Davis of Massachusetts, Davis of Mississippi, Dawson, Dickinson, Greene, Mangum, Miller, Morton, Pearce, Smith, Spruance, Upham, Wales, Walker, Webster, and Whitcomb.

*This motion is taken from the Congressional Globe. It does not appear in the Journal.
†This proceeding is taken from the Congressional Globe. It does not appear in the Journal.

The Hon. James Shields having handed to the Vice-President a letter tendering his resignation,

Mr. Hale called for the reading of the letter, and, no objection being made, the letter was read.

Mr. Hale submitted the following resolution for consideration:

"*Resolved*, That the Vice-President be requested to inform the executive of the State of Illinois that the Hon. James Shields has this day resigned his seat in the Senate of the United States."

On motion by Mr. Berrien,

Ordered, That the consideration of the resolution be postponed until to-morrow.

THURSDAY, *March* 15, 1849.

On motion by Mr. Turney that the Senate proceed to the consideration of the resolution submitted by Mr. Hale the 14th instant, requesting the Vice-President to inform the executive of the State of Illinois that James Shields has this day resigned his seat in the Senate of the United States,

After debate [a debate on the question whether the resolution offered by Mr. Hale or the resolution reported by the committee should be first considered is found on pages 342-346 of the Congressional Globe],

On motion by Mr. Davis, of Mississippi, that the motion lie on the table, it was determined in the affirmative—yeas 33, nays 14.*

On motion by Mr. Douglas, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Atchison, Badger, Baldwin, Bell, Berrien, Borland, Bright, Butler, Calhoun, Clark, Cooper, Corwin, Davis of Massachusetts, Davis of Mississippi, Dawson, Dickinson, Greene, Hamlin, Hunter, Mangum, Mason, Miller, Phelps, Seward, Smith, Spruance, Sturgeon, Upham, Wales, Walker, Webster, Whitcomb, and Yulee.

Those who voted in the negative are Messrs. Cass, Chase, Douglas, Downs, Felch, Fitzpatrick, Foot, Hale, Jones, Norris, Rusk, Soulé, Turney, and Underwood.

On motion by Mr. Mason, the Senate resumed the consideration of the resolution reported by the select committee in relation to the election of James Shields, and,

After debate [the debate is found on pages 346, 347 of the Globe],

On motion of Mr. Davis, of Mississippi, that it lie on the table, it was determined in the negative—yeas 16, nays 32.†

On motion by Mr. Turney, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Cass, Chase, Davis of Mississippi, Douglas, Downs, Fitzpatrick, Foote, Hale, Jones, Norris, Rusk, Soulé, Sturgeon, Turney, Underwood, and Yulee.

Those who voted in the negative are Messrs. Badger, Baldwin, Bell, Berrien, Borland, Bradbury, Bright, Butler, Calhoun, Clarke, Cooper, Corwin, Davis of Massachusetts, Dawson, Dickinson, Felch, Greene, Hamlin, Hunter, Mangum, Mason, Miller, Morton, Phelps, Seward, Smith, Spruance, Upham, Wales, Walker, Webster, and Whitcomb.

[A further debate on the adoption of the resolution reported by the committee is found on pages 347-351 of the Globe.]

On the question to agree to the amendment proposed by Mr. Calhoun the 14th instant, it was determined in the affirmative.

On motion by Mr. Underwood further to amend the resolution, by striking out the words "was void," and inserting in lieu thereof the following: "does not entitle him to a seat as such in this body," it was determined in the negative—yeas 16, nays 28.

On motion by Mr. Underwood, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Atchison, Bradbury, Chase, Davis of Mississippi, Douglas, Downs, Felch, Fitzpatrick, Foote, Jones, Norris, Rusk, Soulé, Sturgeon, Underwood, and Yulee.

Those who voted in the negative are Messrs. Badger, Baldwin, Bell, Berrien, Borland, Bright, Butler, Calhoun, Clarke, Cooper, Corwin, Davis of Massachusetts, Dawson, Dickinson, Greene, Hamlin, Hunter, Mangum, Mason, Miller, Morton, Phelps, Seward, Smith, Spruance, Upham, Wales, and Webster.

On motion by Mr. Douglas to amend the resolution by striking out all after the word "resolved," and inserting the following in lieu thereof:

"That the Vice-President be requested to notify the executive of the State of Illinois that the Hon. James Shields has resigned his seat in this body,"

It was determined in the negative—yeas 12, nays 32.

* The Congressional Globe gives this vote yeas 20, nays 15.
† The Congressional Globe gives this vote yeas 18, nays 32.

On motion by Mr. Douglas, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Cass, Chase, Douglas, Downs, Fitzpatrick, Foote, Jones, Rusk, Soulé, Sturgeon, Underwood, and Yulee.

Those who voted in the negative are Messrs. Atchison, Badger, Baldwin, Bell, Berrien, Borland, Bradbury, Bright, Butler, Calhoun, Clarke, Cooper, Corwin, Davis of Massachusetts, Davis of Mississippi, Dawson, Dickinson, Greene, Hamlin, Hunter, Mangum, Mason, Miller, Morton, Phelps, Seward, Smith, Spruance, Upham, Wales, Walker, and Webster.

No further amendment being proposed, the resolution was then agreed to, as follows:

"*Resolved*, That the election of James Shields to be a Senator of the United States was void, he not having been a citizen of the United States the term of years required as a qualification to be a Senator of the United States at the commencement of the term for which he was elected."

On motion by Mr. Webster,

Ordered, That the Vice-President be requested to transmit to the governor of the State of Illinois a copy of the said resolution, attested by the Secretary of the Senate.

[Thirty-second Congress—First session.]

YULEE vs. MALLORY,

of Florida.

January 13, 1851, the general assembly of Florida met in convention to elect a Senator for the term beginning March 4, 1851. A *viva voce* vote being taken pursuant to the requirements of the constitution of the State, 29 members responded David L. Yulee and 29 responded blank, whereupon the presiding officer declared that there had been no election. January 15 they again met in convention, when 31 members responded R. S. Mallory and 27 voted for Mr. Yulee and others, whereupon the presiding officer declared Mr. Mallory to be duly elected. Neither party appeared to take the seat during the special session of the Senate in March, 1851. March 8 a letter from Mr. Yulee was read stating that he should contest the seat of Mr. Mallory, declared to be elected. December 1, 1851, the credentials of Mr. Mallory were presented and he took the oath. On the same day the letter of Mr. Yulee with accompanying documents was referred to a select committee of five. August 21, 1852, the committee reported that there was in force in that State, at the time of the election, the following resolution: "*Resolved*, That a majority of all the members-elect composing the two houses of the general assembly shall be necessary to determine all elections devolving upon that body"; that this resolution was joint in fact, though not in form, and was sufficient, though without the forms of law usual in legislation, to regulate the "manner of holding elections"; that the whole number of members-elect in this general assembly was 59, and that Mr. Yulee receiving but 29 votes on the first ballot, did not obtain a sufficient number to elect him; that they recommend the adoption of the following resolution: "*Resolved*, That the Hon. Stephen R. Mallory was duly elected a member of the Senate of the United States from the 3d day of March, 1851." The resolution passed the Senate August 27, without a dissenting vote.

Mr. Yulee's claim to the seat was on the ground that the resolution of the legislature of Florida given above was not such legislation as is requisite in order to change the law of a State, and that the law in Florida had always been that the majority of a quroum of the members composing the legislature could elect, and was at that time the law; that the votes of the 29 voting blank should not be counted at all, and that he being the only qualified person voted for, and receiving 29 votes, had a majority of the legal votes, and more than a majority of a quorum, which majority was 16.

The history of the case here given consists of the report of the committee from Senate Reports, 1st sess. 32d Cong., vol. 2, 1851–'52, Report No. 349; a transcript of the proceedings of the Senate relating to the case on August 27, 1852 (being the day on which the case was discussed in the Senate), from the Senate Journal, 1st sess. 32d Cong., 1851–'52; and a transcript of the proceedings of the Senate relating to the payment of mileage and per diem to Mr. Yulee from Senate Journals, 1st and 2d sess. 32d Cong.

The debates in the case are found on pages 1170–1176 of the Appendix to Congressional Globe, vol. 25, 1st sess. 32d Cong., 1851–'52. A reference to the debates on the question of payment to Mr. Yulee is inserted below. The documents accompanying the case which were printed are found in Senate Miscellaneous, 1st sess. 32d Cong., 1851–'52, Nos. 109 and 110.

The minor proceedings of the Senate relating to the case previous to the day of its discussion in the Senate have been omitted in making up the history of this case.

REPORT OF COMMITTEE.

Committee appointed December 2, 1851.—Messrs. Berrien*, Bright, Davis, Mason, and Pearce.

IN THE SENATE OF THE UNITED STATES.

AUGUST 21, 1852.—Ordered to be printed.

Mr. Bright made the following report:

The select committee to whom was referred the memorial of the Hon. David L. Yulee, claiming the seat in the Senate held by the Hon. Stephen R. Mallory, from the State of Florida, together with sundry documents therewith, report:

That they have examined the law and the facts connected with this case, they have heard the contestant by able counsel, and the sitting member in person, and after giving to each that consideration which the importance of the questions embraced merits, find that on the 13th day of January, 1851, the general assembly of Florida met in convention of the two houses to choose a Senator of the United States to supply a vacancy which would occur before another constitutional session.

The president of the senate presided, and upon a call of the roll a poll *viva voce* was taken of the members pursuant to the requirements of the constitution of the State, and 29 responded David L. Yulee and 29 blank, whereupon the presiding officer declared that no choice had been made; they then proceeded to a second and third vote, with substantially the same result. On the 15th of January they again met in convention for the same purpose, and upon a call of the roll 31 members responded R. S. Mallory, and 27 votes for Mr. Yulee and others; whereupon the president declared Mr. Mallory to be duly elected.

* February 2, 1852, Mr. *Berrien resigned and Mr. Badger* was appointed in his place February 3.

Neither the record nor any other evidence in the case shows that objection was made to any of those proceedings, or that their legality was questioned in or out of the convention at the time.

The certificate of election was granted to Mr. Mallory, and he having been qualified, now holds the seat.

Mr. Yulee contests his right to the seat on the ground that he was himself elected at the first vote, because there was a quorum of each house present as appears by the journals, and he, being the only qualified person voted for, had a majority of the legal votes. Those who responded "blank," he contends, voted for no qualified person, and waived their electoral rights as effectually as if they had been silent.

Mr. Mallory opposes to this inference a resolution of the two houses adopted in 1845, by concurrent vote, which has never been rescinded, and is in the following words:

"*Resolved*, That a majority of all the members-elect composing the two houses of general assembly shall be necessary to determine all elections devolving upon that body."

The whole number of members-elect was 59, and Mr. Yulee, not having a majority of that number, was not elected. From the facts disclosed it is quite apparent that the convention took this view of the matter.

In deciding the questions which are raised out of the facts, the Constitution of the United States must, to the extent of its provisions, prevail over all other authority. That instrument gives to each State the right to elect two Senators. Article I, section 4, is in these words: "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof."

The words of the third section in the same article are: "The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years."

The first question, then, which arises is, What constitutes the legislature of Florida? For that, and that only, has the right to make the choice. The Constitution of the United States, Article I, section 1, says: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." The constitution of Florida declares that "the legislative power of the State shall be vested in two distinct branches, the one to be styled the senate, the other the house of representatives, both together the general assembly." These authorities leave no doubt that the two houses constitute the legislature of Florida, which holds the unqualified right under the Constitution of the United States to elect the Senators for the State.

Has this body executed the trust confided to it in such a manner as to satisfy the terms of the Constitution? The time, the place, and the manner of holding the election are all to be prescribed by it. To the time and place no objection is made, but the validity of the manner is questioned.

No mode of election is prescribed by the Constitution, but this duty is left to the discretion of the several legislatures of the States. In carrying out the power some elect by a concurrent vote of the two branches, the one having a negative upon the action of the other; others elect in a convention of the two houses, in which case (as far as your committee are advised) a majority prevails.

If numbers be regarded as a material element in such elections, it is manifest that in the same body of men different results may be produced according as one mode or the other is pursued. There may be in convention a majority in favor of a candidate, making his success by this mode certain, while with the same number in his favor he might be defeated in one of the houses if a concurrent vote is required; and such cases have occurred.

Again, it may be observed that the power given to the legislature to regulate the time, place, and manner applies as well to Representatives as to Senators; and here again are other diversities in the manner of exercising it. Some States elect by a plurality of votes, others by a majority, and others have required at the first trial a majority and a plurality afterward. Some again (until Congress made a law upon the subject) elected by general ticket; others, either by single districts or districts entitled to more than one, according to convenience. None of those modes of electing Senators or Representatives has been held unconstitutional, but members have uniformly been admitted to their seats whether elected in one or other of these modes.

These practices have at all times existed, and have uniformly been recognized as constitutional, proving clearly that the discretion reposed in the legislatures of the States may be exercised in a diversity of ways and yet be a sufficient compliance with the requirements of the Constitution.

The legislature of Florida adopted a course different from any of these by requiring a majority of all the members-elect in convention to make choice of a Senator. This rule is as unobjectionable and harmonizes as well with the Constitution as the modes pursued elsewhere. The right of the State to adopt such a rule has not been directly

questioned, but the legality of the means by which it was executed is denied. This point is the chief ground of controversy between the parties. On the one hand, the validity of the resolution above cited is denied; on the other, it is alleged that if the resolution was not in force a usage equivalent to it existed, which was equally obligatory upon the convention. This again is denied.

We will first consider the character, force, and effect of the resolution.

The first objection to it is that it contains no evidence on its face that it is a *joint act* of the two houses. This is true; but the journals place this matter in the clearest light. While there is an apparent defect in form there was none in fact. It was passed in one house, sent to the other, and there agreed to by a concurrent vote; it is a clear, unequivocal expression of the will of each house. No words added to it can make it a stronger or more complete expression of that will. It is also in substance joint, since it is the will of both houses expressed in the same words. Moreover it is permanent, being designed as a rule of action for both, by the united will of both, and it must stand as such until both concur in repealing or rescinding it.

The next objection is that it has not the forms of law usual in legislation, because it is not signed by the officers of each house or approved by the governor. It is a sufficient reply to state that the Constitution does not require the legislature to regulate the manner of election by *law;* it may be by resolution, either joint or several, or in any other method which commands the agreement of both houses of the legislature. The form of action being discretionary and the substance right, the objection becomes immaterial.

The will of the two houses, when ascertained by vote in their respective chambers, is for this purpose a sufficient law, because they alone are empowered to prescribe the manner of choosing in such mode or by such means as they please. On this point a State constitution can neither control nor modify that of the United States, for the latter is the supreme law.

This resolution being joint in fact, though not in the usual form, was a standing order of the two houses, in force until they by concurrent vote should rescind or modify it. It was consequently the rule prescribing the manner of election to the two houses when they met in convention on the 13th of January, 1851, and they were bound to proceed according to its requirements.

This being the view which the committee take of the case, there is no necessity for pursuing the subject further, since Mr. Yulee did not obtain votes sufficient to elect him. It may not, however, be out of place to observe that the facts disclosed render it evident that the two houses entered the convention with the full belief that no number short of a majority of all the members-elect could make a choice of a Senator, and conducted their proceedings under the conviction that they were bound to adhere to the established practice. There is also reason for believing that the members of the convention assembled and acted under the conviction that blank votes would be counted, inasmuch as the two houses on a former occasion and in another election had so decided. If blank votes are beyond doubt a nullity; if the resolution is to be regarded of no effect, and we are brought to the question, under these circumstances, whether Mr. Yulee is duly elected, it seems to us difficult to maintain the affirmative of that proposition upon the facts before us. If the members were misled on both of these material points by assuming that their previous doings afforded safe and certain rules of action, then they were misguided by what they had a right to consider as authority, and must have acted under a misconception of right which stood, as they supposed, unquestioned. If this be so they stand substantially in the condition of an elector who votes for a person disqualified, believing him to be qualified. The vote in such a case, though unavailing, is not rejected from the count.

The only remedy which we can see for an election carried on through misapprehension from such well-founded causes is to set it wholly aside and open the way to a new choice; but in our view of the case there is no occasion to consider what ought to be done upon such a state of facts.

The committee ought perhaps to notice one other fact which has been relied upon. Since the adoption of the resolution the journals show a case in which a person who was declared not to be elected in convention because he had not the number of votes required was afterward declared elected by a concurrent resolution of the two houses. All that need be said of this transaction is that it passed the senate through the misapprehension of one of its members, as the journal proves, and was manifestly a violation of the resolution. It is equally manifest that the members of both houses did not regard it as affecting in any way the standing order, for its provisions were at all times subsequently observed as obligatory in convention. No argument is necessary to prove that such an irregular proceeding could have no effect upon the order either to modify or rescind it.

With these views the committee recommend the adoption of the following resolution:

Resolved, That the Hon. Stephen R. Mallory was duly elected a member of the Senate of the United States from the 3d day of March, 1851.

[Extract from Senate Journal, August 27, 1852.]

On motion by Mr. Weller that the Senate proceed to the consideration of the resolution reported by the select committee to whom was referred the memorial of the Hon. David L. Yulee, claiming the seat in the Senate held by the Hon. Stephen R. Mallory, it was determined in the affirmative—yeas 23, nays 21.

On motion by Mr. Weller, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Adams, Atchison, Bayard, Bradbury, Bright, Brooke, Charlton, Clemens, Dawson, Felch, Gwin, Hale, Houston, Hunter, James, Jones of Iowa, King, Seward, Stockton, Sumner, Wade, Walker, and Weller.

Those who voted in the negative are Messrs. Badger, Bell, Borland, Brodhead, Clarke, Davis, Dodge of Wisconsin, Dodge of Iowa, Douglas, Downs, Fish, Hamlin, Mangum, Miller, Morton, Pearce, Rusk, Smith, Spruance, Underwood, and Upham.

The Senate proceeded to consider the resolution submitted by Mr. Morton the 24th August, to give leave to the Hon. David L. Yulee to be heard in person at the bar of the Senate; and,

On motion by Mr. Weller that the resolution lie on the table, it was determined in the negative—yeas 17, nays 29.

On motion by Mr. Gwin, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Adams, Bayard, Bradbury, Clarke, Clemens, Downs, Fish, Gwin, Houston, James, Jones of Iowa, Norris, Pearce, Rusk, Spruance, Stockton, and Weller.

Those who voted in the negative are Messrs. Atchison, Badger, Bell, Borland, Brodhead, Brooke, Butler, Cass, Charlton, Dawson, De Saussure, Dodge of Wisconsin, Dodge of Iowa, Douglas, Felch, Geyer, Hamlin, Hunter, King, Mangum, Mason, Meriwether, Miller, Morton, Seward, Shields, Underwood, Upham, and Wade.

On motion by Mr. Pearce to amend the resolution by adding thereto "for two hours," it was determined in the affirmative—yeas 31, nays 21.

On motion by Mr. Badger, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Adams, Atchison, Bradbury, Bright, Butler, Cass, Clarke, Clemens, Davis, Dawson, Dodge of Wisconsin, Dodge of Iowa, Downs, Felch, Fish, Foote, Hale, Houston, Hunter, James, Jones of Iowa, King, Meriwether, Miller, Norris, Pearce, Pratt, Smith, Stockton, Sumner, and Weller.

Those who voted in the negative are Messrs. Badger, Bayard, Borland, Brodhead, Brooke, Charlton, Chase, Cooper, De Saussure, Douglas, Geyer, Gwin, Hamlin, Mangum, Mason, Morton, Rusk, Spruance, Underwood, Upham, and Wade.

The resolution submitted by Mr. Morton was then agreed to, as follows:

"*Resolved*, That the Hon. D. L. Yulee, who contests the seat of the Hon. S. R. Mallory, have leave to be heard in person at the bar of the Senate for two hours."

On the question to agree to the resolution reported by the select committee, as follows:

"*Resolved*, That the Hon. Stephen R. Mallory was duly elected a member of the Senate of the United States from the 3d day of March, 1851,"

A motion was made by Mr. Mangum that the further consideration thereof be postponed to the first Tuesday after the second Monday in December next; and it was determined in the negative—yeas 18, nays 37.

On motion by Mr. Bradbury, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Badger, Bayard, Bell, Borland, Brodhead, Cooper, De Saussure, Dodge of Wisconsin, Dodge of Iowa, Douglas, Downs, Fish, Hamlin, Mangum, Meriwether, Miller, Morton, and Upham.

Those who voted in the negative are Messrs. Adams, Atchison, Bradbury, Bright, Brooke, Butler, Cass, Charlton, Chase, Clarke, Clemens, Davis, Dawson, Felch, Foote, Geyer, Gwin, Hale, Houston, Hunter, James, Jones of Iowa, King, Mason, Norris, Pratt, Rusk, Seward, Smith, Spruance, Stockton, Sumner, Toucey, Underwood, Wade, Walker, and Weller.

Mr. Yulee having addressed the Senate,

On motion, Mr. Morton was excused from voting on the resolution.

On the question to agree to the resolution, it was determined in the affirmative—yeas 41.

On motion by Mr. Pratt, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Badger Bayard, Bell, Bradbury, Bright, Brooke, Butler, Cass, Charlton, Clemens, Cooper, Davis, Dawson, De Saussure, Dodge of

Wisconsin, Dodge of Iowa, Downs, Felch, Fish, Foote, Geyer, Gwin, Houston, Hunter, James, Jones of Iowa, King, Mason, Meriwether, Miller, Norris, Pratt, Rusk, Seward, Smith, Soulé, Spruance, Sumner, Toucey, Underwood, and Weller.

COMPENSATION OF MR. YULEE.

MONDAY, *August* 30, 1852.

Mr. Morton submitted the following resolution; which was read:

"*Resolved*, That there be paid out of the contingent fund of the Senate to the Hon. David L. Yulee a sum equal to the amount of mileage and per diem compensation of a Senator from the commencement of the present session to the 27th instant, the day on which the Senate decided that the Hon. Stephen R. Mallory, whose seat in the Senate was claimed by him, was duly elected a member of the Senate from the State of Florida."

TUESDAY, *August* 31, 1852.

The Senate proceeded to consider the resolution submitted by Mr. Morton the 30th instant, directing a payment to the Hon. David L. Yulee from the contingent fund; and,

After debate,

On motion by Mr. Morton,

Ordered, That it lie on the table.

[Some remarks against the passage of this resolution are found on page 2488 of the Congressional Globe, vol. 24, part 3, 1st sess. 32d Cong., 1851–'52.]

FRIDAY, *February* 25, 1853.

Mr. Morton submitted the following resolution; which was read. [Resolution given above.]

MONDAY, *March* 7, 1853.

Mr. Morton submitted the following resolution; which was read. [Resolution given above.]

THURSDAY, *March* 17, 1853.

The Senate proceeded to consider the resolution submitted by Mr. Morton the 7th instant, to allow per diem and mileage to the Hon. David L. Yulee during the time he contested the seat of the Hon. Mr. Mallory in the Senate, and on the question, "Shall the resolution pass?" it was determined in the affirmative—yeas 23, nays 19.

On motion by Mr. Houston, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Badger, Borland, Brodhead, Butler, Cooper, Dodge of Wisconsin, Dodge of Iowa, Douglas, Evans, Everett, Fitzpatrick, Gwin, Hunter, James, Jones of Iowa, Mason, Morton, Sebastian, Seward, Shields, Soulé, Sumner, and Walker.

Those who voted in the negative are Messrs. Adams, Atchison, Atherton, Bayard, Benjamin, Bright, Chase, Geyer, Hamlin, Houston, Norris, Pearce, Phelps, Rusk, Stuart, Thompson of Kentucky, Thompson of New Jersey, Weller, and Wright.

[A debate on the adoption of the resolution is found on pages 280–283 of the Appendix to Congressional Globe, vol. 26, 2d sess. 32d Cong.]

[Thirty-fourth Congress—First session.]

LYMAN TRUMBULL,

Senator from Illinois from March 4, 1855, *to March* 3, 1873.

June 7, 1852, Mr. Trumbull was elected a judge of the supreme court of Illinois for a term of nine years, and was duly commissioned June 24. May 19, 1853, he resigned this office, to take effect July 4, 1853. February 8, 1855, he was elected to the Senate of the United States for the term beginning March 4, 1855. The constitution of Illinois provided that the judges of the supreme court should not be eligible to any office of public trust or profit in the United States during the term for which they were elected, nor for one year thereafter; and that all votes for them, for any elective office, given by the general assembly, should be void. When Mr. Trumbull's credentials were presented in the Senate, a protest of members of the legislature was presented, protesting against the legality of the election on the ground that it was void by virtue of the provision of the constitution referred to. The subject was referred to the Committee on the Judiciary, who reported that there was such a division of opinion as to render it proper to refer the subject to the Senate, and asked to be excused, which report was accepted by the Senate. A resolution declaring Mr. Trumbull entitled to his seat was then introduced and passed the Senate by a vote of 35 yeas to 8 nays. The arguments show that the Senators voting in favor of the legality of the election did so from different grounds, some proceeding upon the ground that this case did not come within the meaning of the clause of the State constitution referred to, because Mr. Trumbull had resigned the office of judge more than a year before his election to the Senate; and others proceeding upon the ground that a State cannot superadd qualifications of a Senator to those required by the United States Constitution. Extracts from the debates given below will show the lines of the different arguments.

The history of the case here given consists of the report of the committee taken from Senate Reports, 34th Cong., 1st sess. vol. 1, 1855–'56, report No. 15; the proceedings of the Senate relating to the case from the Senate Journal, 1st and 2d sess. 34th Cong., 1855–'56; and extracts from the debates found in the Congressional Globe, part 1, 1st sess. 34th Cong., 1855–'56.

Special references to the debates of each day are inserted below.

REPORT OF COMMITTEE, CONTAINING THE DOCUMENTS PRINTED IN THE CASE.

[The committee consisted of Messrs. Butler (chairman), Toucey, Bayard, Geyer, Toombs, and Pugh.]

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1856.—Submitted, agreed to, and ordered to be printed with the protest and other papers.

Mr. Butler made the following report:

The Committee on the Judiciary, to whom were referred the "Protest of certain senators and representatives of the legislature of the State of Illinois against the election of the Hon. Lyman Trumbull as a Senator of the United States," and other papers, report:

That it has been under consideration and discussion by the committee, and there being such a division of opinion as to render it proper, in their judgment, to refer the subject to the Senate, ask to be discharged from the further consideration thereof.

Certified copy of the resignation of Lyman Trumbull of the office of justice of the supreme court of the State of Illinois.

ALTON, *May* 19, 1853.

SIR: I am induced, by considerations of a personal and private character, to resign the office of justice of the supreme court; but to allow time for the election of a person to succeed me, so that no public inconvenience may result from a vacancy on the bench, I hereby tender my resignation of said office, to take effect on the 4th day of July next.

Yours, very respectfully,

LYMAN TRUMBULL.

His excellency JOEL A. MATTESON,
Governor of Illinois.

UNITED STATES OF AMERICA,
State of Illinois, ss:

I, Alexander Starne, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true and correct copy of Lyman Trumbull's resignation, filed in the secretary's office, May 20, 1853.

And I further certify that Walter B. Scates was elected to fill said vacancy, and entered upon the discharge of the duties of said office, July 13, 1853.

In testimony whereof, I have hereunto set my hand and affixed the seal of State, this 9th day of November, A. D. 1855.

[L. S.] ALEXANDER STARNE,
Secretary of State.

Certificate of Joel A. Matteson, governor of the State of Illinois, relative to the election of Lyman Trumbull to be a Senator of the United States, and also to the office of justice of the supreme court of that State.

EXECUTIVE DEPARTMENT, STATE OF ILLINOIS,
November 1, 1855.

I, Joel A. Matteson, governor of the State of Illinois, do hereby certify that it appears of record that on the 8th day of February, A. D. 1855, the two houses of the legislature of the State of Illinois met in convention and proceeded to vote for the election of a Senator for said State to the Senate of the United States; that upon the final vote Lyman Trumbull received 51 votes, Joel A. Matteson received 47 votes, and Archibald Williams received 1 vote; and the Speaker of the House of Representatives thereupon declared Lyman Trumbull elected a Senator of the United States for the State of Illinois for six years from the 4th day of March, A. D. 1855.

That it further appears from record that the said Lyman Trumbull was elected, on the 7th day of June, A. D. 1852, a justice of the supreme court of the State of Illinois for a term of nine years; that on the 24th day of June, A. D. 1852, he was duly commissioned as justice for the term aforesaid, commencing on the first Monday of June, A. D. 1852, and ending on the first Monday of June, A. D. 1861; that he was sworn and entered upon the discharge of his duties appertaining to said office; that the constitution of the State of Illinois contains the following provision, to wit:

"The judges of the supreme and circuit courts shall not be eligible to any other office of public trust or profit, in this State or the United States, during the term for which they are elected, nor for one year thereafter; all votes for either of them, for any elective office (except that of judge of the supreme or circuit court) given by the general assembly or people, shall be void."

All of which, together with the legality of said election, are respectfully submitted to the Senate of the United States.

J. A. MATTESON.

By the governor:
[L. S.]

ALEXANDER STARNE,
Secretary of State.

To the PRESIDENT OF THE SENATE
of the United States.

UNITED STATES OF AMERICA,
State of Illinois, ss:

I, Alexander Starne, secretary of state for the State of Illinois, do hereby certify that Lyman Trumbull was, on the seventh day of June, A. D. 1852, elected judge of the supreme court of the State of Illinois, and was duly commissioned as such for the term of nine years from the 24th day of June, 1852; that he took upon himself the oath of office, and entered upon the discharge of the duties of the same; that said term of office for which he was elected is unexpired, and will not expire until the 27th day of June, 1861.

In testimony whereof, I have hereunto set my hand and affixed the seal of said State, this 24th day of February, A. D. 1855.

[L. S.]

ALEXANDER STARNE,
Secretary of State.

Protest of certain senators and representatives of the legislature of the State of Illinois against the election of Lyman Trumbull as a Senator of the United States.

To the honorable the Senate of the United States:

The undersigned, senators and representatives of the people of the State of Illinois in the legislature thereof, respectfully represent: That at a meeting of both houses of said legislature, in general assembly convened, on the 8th day of February, 1855, for the purpose of electing a Senator for said State to the Senate of the United States for six years from the 4th of March, 1855, 51 votes were cast for Lyman Trumbull, 47 votes for Joel A. Matteson, and 1 vote for Archibald Williams, and that one member of said legislature was absent.

They further represent that the constitution of the State of Illinois contains the following provision in the tenth section of the fourth article thereof:

"The judges of the supreme and circuit courts shall not be eligible to any other office or public trust of profit in this State, or the United States, during the term for which they are elected, nor for one year thereafter; all votes for either of them, for any elective office, except that of judge of the supreme or circuit courts, given by the general assembly or the people, shall be void."

They further represent that said Lyman Trumbull was, on the 7th day of June, 1852, elected judge of the supreme court of the State of Illinois, and was duly commissioned as such, for the term of nine years, from the 24th day of June, 1852; that he took upon himself the oath of said office, and entered upon the discharge of the duties of the same; that his said term of office for which he was elected is unexpired, and will not expire until the 27th day of June, 1861; and that in and by virtue of the said provision of the constitution of the said State of Illinois, the votes cast by the members of the general assembly for said Trumbull for Senator of said State, as aforesaid, are nulland void, and said Trumbull is not legally elected to the Senate of the United States, and is not entitled to his seat in said Senate; and against said pretended election the undersigned, in behalf of themselves and their constituents, do hereby protest.

SENATORS.

Hugh L. Sutphin.	A. J. Kuykendall.	James L. D. Morrison.
Joseph Morton.	M. O. Kean.	G. R. Jenngan.
James M. Campbell.	Ben. Graham.	A. P. Corder.
J. C. Davis.	John E. Detrich.	
W. H. Carlin.	Silas L. Bryan.	

REPRESENTATIVES.

F. D. Preston.	Eli Seehorn.	George H. Holliday.
C. L. Higbee.	James Bradford.	J. R. Bennett.
Tho. P. Richmond.	Jonathan Dearborn.	S. W. Moulton.
George Walker.	D. McClain.	W. N. Cline.
T. B. Sauner.	Frank M. Rawlings.	Presley Funkhouser.
Dr. H. A. Browne.	G. M. Gray.	James M. Pursley.
S. D. Masters.	Jona. McDaniel.	Hugh Gregg.
Saml. H. Martin.	Wm. R. Morrison.	C. C. Hopkins.
William J. Allen.	P. E. Hosmer.	Henry Richmond.
B. P. Hinch.	L. F. McCrillis.	

Credentials of the Hon. Lyman Trumbull, elected a Senator by the legislature of the State of Illinois.

It is hereby certified that, in pursuance of a joint resolution to that effect adopted, the two houses of the general assembly of the State of Illinois, now in session at Springfield in said State, did convene in joint session in the hall of the house of representatives on the eighth day of February, in the year of our Lord one thousand eight hundred and fifty-five, for the purpose of electing a Senator to the Congress of the United States for the term of six years from the fourth day of March, in the year aforesaid, and that Lyman Trumbull was then and there, by said joint session of the legislature of said State, duly elected Senator to represent the State of Illinois in the Senate of the United States for six years from the said fourth day of March next.

Dated at Springfield the ninth day of February, one thousand eight hundred and fifty-five.

Attest:

GEORGE T. BROWN,
Secretary of the Senate.

Attest:

EDWIN T. BRIDGES,
Clerk of the House of Representatives.

THOMAS G. TURNER,
Speaker of the House of Representatives and Presiding Officer of the said joint session.

UNITED STATES OF AMERICA,
State of Illinois, ss:

I, Alexander Starne, secretary of state for the State of Illinois, do hereby certify that the foregoing is a true and correct copy of a certificate of the election of Lyman Trumbull to the United States Senate, as filed in my office by the clerk of the house of representatives.

In testimony whereof, I have hereunto set my hand and affixed the seal of said State, this 15th day of February, A. D. 1855.

[L. S.]

ALEXANDER STARNE,
Secretary of State.

MONDAY, *December* 3, 1855.

Mr. Crittenden presented the credentials of the Hon. Lyman Trumbull, elected a Senator by the general assembly of the State of Illinois for six years from the 4th day of March, 1855; which were read.

Mr. Cass presented the protest of certain senators and representatives of the legislature of the State of Illinois against the election of the Hon. Lyman Trumbull.

The oath prescribed by law was administered to Mr. Trumbull, and he took his seat in the Senate.

THURSDAY, *December* 20, 1855.

Mr. Trumbull presented a certified copy of a letter of Lyman Trumbull, addressed to the governor of Illinois, resigning the office of justice of the supreme court of that State; which was referred to the Committee on the Judiciary.

On motion by Mr. Cass,

Ordered, That the protest of certain senators and representatives of the legislature of Illinois against the election of the Hon. Lyman Trumbull as a Senator of the United States, on the files of the Senate, be referred to the Committee on the Judiciary.

[Some remarks on the question whether the subject should go to the Committee on the Judiciary or to a select committee are found on page 58 of the Congressional Globe referred to in the head-note.]

MONDAY, *February* 4, 1856.

The President *pro tempore* presented a certificate of the governor of Illinois of the election of the Hon. Lyman Trumbull by the legislature of that State as a Senator in Congress, and of his election and appointment as a justice of the supreme court of Illinois, with an extract from the constitution of Illinois respecting the eligibility of judges of the courts of that State to other offices during the term for which they are appointed; which was referred to the Committee on the Judiciary.

[Some remarks on the question of reference of the communication are found on page 343 of the Congressional Globe referred to in the head-note. Mr. Seward cited the admission of Hon. N. P. Tallmadge, of New York, as a precedent in favor of the right of Mr. Trumbull.]

WEDNESDAY, *February* 20, 1856.

[Some remarks made on Mr. Trumbull's eligibility are found on pages 466–468 of the Congressional Globe referred to.]

WEDNESDAY, *February* 27, 1856.

Mr. Butler, from the Committee on the Judiciary, to whom was referred the protest of certain senators and representatives of the legislature of Illinois against the election of the Hon. Lyman Trumbull as a Senator of the United States, with other papers, submitted a report (No. 15).

The Senate proceeded to consider the report; and, in concurrence therewith,

Ordered, That the committee be discharged from the further consideration of the subject.

Ordered, That the report, with the accompanying papers, be printed.

Mr. Crittenden submitted the following resolution for consideration:

"*Resolved*, That Lyman Trumbull is entitled to a seat in this body as a Senator elected by the legislature of the State of Illinois, for the term of six years, from the 4th of March, 1855."

The Senate proceeded, by unanimous consent, to consider the said resolution; and,

On motion by Mr. Stuart,

Ordered, That the further consideration thereof be postponed to and made the special order of the day for Monday, the 3d of March next.

[A short debate is found on pages 514–515 of the Congressional Globe referred to.]

MONDAY, *March* 3, 1856.

The Senate resumed the consideration of the resolution submitted by Mr. Crittenden, the 27th of February, declaring the Hon. Lyman Trumbull entitled to a seat as a Senator of the United States; and,

After debate,

On motion by Mr. Stuart,

Ordered, That the further consideration of the resolution be postponed until to-morrow.

[The subject is debated at length on pages 547–552 of the Congressional Globe referred to.]

TUESDAY, *March* 4, 1856.

The Senate resumed the consideration of the resolution submitted by Mr. Crittenden, the 27th of February, that the Hon. Lyman Trumbull is entitled to a seat in the Senate of the United States; and,

After debate,

On motion by Mr. Weller,

Ordered, That the further consideration thereof be postponed until to-morrow.

[The debate is continued on pages 562–567 of the Congressional Globe referred to.]

WEDNESDAY, *March* 5, 1856.

The Senate resumed the consideration of the resolution submitted by Mr. Crittenden, the 27th of February, in relation to the rights of the Hon. Lyman Trumbull to a seat in the Senate; and,

After debate,

On the question to agree to the resolution, it was determined in the affirmative—yeas 35, nays 8.

On motion by Mr. Toucey, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Adams, Allen, Bell of Tennessee, Bright, Brown, Butler, Cass, Collamer, Crittenden, Dodge, Durkee, Evans, Fessenden, Fish, Foot, Foster, Geyer, Hale, Hamlin, Harlan, Houston, Hunter, James, Mallory, Mason, Pearce, Reid, Rusk, Sebastian, Seward, Sumner, Toucey, Wade, Wilson, and Yulee.

Those who voted in the negative are Messrs. Clay, Iverson, Johnson, Jones of Iowa, Pugh, Slidell, Stuart, and Weller.

So it was

Resolved, That Lyman Trumbull is entitled to a seat in this body as a Senator elected by the legislature of the State of Illinois for the term of six years from the 4th of March, 1855.

[The debate is concluded on pages 579–584 of the Congressional Globe referred to.]

[Extracts from a speech of Mr. Crittenden, of Kentucky, delivered March 3, 1856, in support of the legality of Mr. Trumbull's election, taken from pages 547 and 548 of the Congressional Globe referred to in the head-note.]

"The facts of the case are few and undisputed. Mr. Trumbull was, in point of fact, chosen by the legislature of Illinois as a Senator in this body. It is true that some four years before that time he had been elected a judge of one of the circuit courts of that State, but it is also true that he had resigned that office about eighteen months before his election as a Senator. The first question, therefore, that presents itself is, whether upon these facts, and a proper construction of the constitution of the State of Illinois, he is entitled to his seat? No objection is made to any qualification required by the Constitution of the United States. The question is, whether there is anything in the constitution of Illinois which can invalidate his election. I will first consider the question as it arises upon the constitution of Illinois, and then as respects the Constitution of the United States. The provision of the constitution of Illinois I desire to read to the Senate. The tenth section of the fifth article of the constitution of that State reads in these words:

"'The judges of the supreme court shall receive a salary of $1,200 per annum, payable quarterly, and no more. The judges of the circuit courts shall receive a salary of $1,000 per annum, payable quarterly, and no more. The judges of the supreme and circuit courts shall not be eligible to any other office or public trust, of profit in this State, or the United States, during the term for which they are elected, nor for one year thereafter. All votes for either of them for any elective office (except that of judge of the supreme or circuit court) given by the general assembly, or the people, shall be void.'

"Mr. Trumbull was elected on the 7th of June, 1852, judge of the circuit court for the term of nine years. Having held that office less than one year, he resigned on the 19th of May, 1853, to take effect on the ensuing 4th of July. He was elected to the Senate of the United States on the 8th of February, 1855, more than eighteen months after his resignation, but before the expiration of the nine years for which he had been originally elected a judge.

"To these facts we are to apply the constitutional provision which I have read, which declares that no judge of the supreme court or circuit court should be eligible to any other office for the term for which he was elected, and for one year thereafter. Does this prohibition in the constitution of Illinois apply to such a case as this? I say that it does not. In order to ascertain the meaning of any instrument, we must endeavor to ascertain the intention of its framers. What was the intention of the framers of this provision? It was to preserve the independence of their judiciary, and to prevent the

possibility of one of the judges of the State using the influence of that office to obtain another. That is the reason and the sole reason for this prohibition; and to accomplish this object, the constitution of Illinois provides not only for ineligibility during the term of nine years, but for one year thereafter, lest he should, by anticipated contrivances, intrigues, and influence, provide for another office by the use of the influence which his present office affords. One year after the expiration of his office was supposed to be sufficient for that purpose.

* * * * * * *

"Now, sir, suppose I am wrong; suppose that, without any reason, without any motive, without any mischief to be suppressed, without any foundation for any of the objections applicable to the incumbent of office, this constitution shall; by the force of its mere letter, be applied to this case, and that it does create, so far as it can act, an impediment, an obstacle to the election of this gentleman, is such a provision valid, or can it affect his right, when we look to the Constitution of the United States under which the Senate has been created? I think clearly not. We are to look to the Constitution of the United States for the whole frame of this Government. It has created all the powers and all the instruments of this Government. It has created the Senate. Before this creation, neither the State of Illinois as such, nor any other State in the Union, had any power to elect a Senator. There was no such office to be filled by them as Senator of the United States. Their agency was simply employed by the Federal Constitution. The agency of the legislatures of the several States was employed to elect Senators who constitute this body. It is an all-important branch of the Government. The designation of the power that was to elect, the designation of the persons qualified to be elected, all entered into the very essence of the subject. All this was to have its influence on this Government. All and every single circumstance of this was to have its influence in connecting the State governments and the General Government, and in connecting them in such a way as to preserve that species of political relations between them which it was thought would operate most advantageously to all.

"This was the view of the framers of the Constitution of the United States. It was a subject for them whether the legislature should elect Senators, whether the people should elect them, or whether the governors of the several States should appoint them. All this was within the competency of the framers of the Constitution. Neither people, nor governors, nor legislatures had previously any power to elect or appoint a Senator. There was no such officer; there was no such power. The whole was a new creation. The Constitution determines that the power to choose Senators shall be in the legislatures of the several States. The power to elect Senators was committed to the legislatures. Who shall they be, was the next question. The question was, how to designate a Senator by some prescribed qualification, so as to fix the class from which he should come. Shall he be a man who is required to possess any particular amount of fortune? Shall he be a man who must be subjected to some religious test? Of what age shall he be?

"Were not all these points fairly presented to the framers of the Constitution of the United States? Were they not important questions to be acted upon and decided? They were framing the Government. The constitution of this body was an essential part of the Government. That was to depend on the parties, or the condition of the parties, out of whom they would make this great council of the nation. Should he be a citizen? Might they select him anywhere? Should he be an inhabitant of his State? Might he be of any age?

"All these subjects being considered, the Constitution of the United States decides upon the whole matter by providing that each Senator shall be of the age of thirty years, shall have been at least nine years a citizen of the United States, and shall be an inhabitant of the State from which he is chosen.

"Now, sir, does this not embrace the whole subject? Does it not regulate the whole subject? According to the plain meaning of the Federal Constitution every inhabitant of a State, thirty years of age, who has been nine years a citizen of the United States, is eligible to the office of Senator. What more can be said about it? It is now supposed by those who contend that Mr. Trumbull is not entitled to his seat, that it is competent for a State, by its constitution—and I suppose they would equally contend by any law which the legislature might from time to time pass—to superadd additional qualifications. The Constitution of the United States, they say, has only in part regulated the subject, and therefore it is no interference with that Constitution to make additional regulations. This, I think it will be plain to all, is a mere sophism, when you come to consider it. If it was a power within the regulation of, and proper to be regulated by, the Constitution of the United States, and if that Constitution has qualified it, as I have stated, prescribing the age, prescribing the residence, prescribing the citizenship, was there anything more intended? If so, the framers of the Constitution would have said so. The very enumeration of these qualifications excludes the idea that they intended

any other qualifications. That is the plain rule of ordinary construction; but, for a reason above all technical considerations, it is applicable here. The object of the Federal Constitution was to have a body framed by a uniform rule throughout the United States, coming here to constitute this great council of the country—coming here by the agency of the same elective power, the State legislatures—coming here under the same requirements, and with the same qualifications—and standing here upon a perfect and exact equality in all respects to represent the nation justly and equally, and with a sole regard to the common welfare of the Republic."

[Extract from a speech of Mr. Pugh, of Ohio, adverse to the right of Mr. Trumbull, delivered March 3, 1856, taken from pages 549, 550 of the Congressional Globe referred to in the head-note.]

"The Senator from Kentucky claims, in Mr. Trumbull's behalf, that the Constitution of the United States has prescribed the qualifications requisite for a Senator, and that no State can add to or subtract from those qualifications.

"I am not disposed to try the virtue of this conclusion by logical tests; I deny the truth of its premises. The Constitution of the United States does not prescribe the qualifications of a Senator in the sense here assumed. Its language is that of exclusion, and not of qualification:

"'No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.'

"In this instance, as in all others, the language of the Constitution was aptly selected with a view to the nature of our Federal Government. It was intended that each Senator should be thirty years of age, and should have been nine years a citizen of the United States, because the duties of his office were thought to require an experienced judgment and considerable familiarity with the course of public affairs. And to secure the election of Senators from all extraneous influence, such as might have been apprehended perhaps from the dictation of the large States or the patronage of the Federal Government, it was furthermore declared that each Senator should not merely be a citizen but an actual resident—'inhabitant'—of the State for which he is chosen.

"I agree that no State can dispense with or subtract from the requisites prescribed in the Federal Constitution; but I can see no pretense for asserting that the States may not superadd any qualification which is consistent with those requisites. A Senator is an officer of the Federal Government; he is also an officer of his own State. He is elected to represent the people of the State, in an aggregate and organized capacity, as one of the sovereign parties to our Federal compact. He is elected, to be sure, by the legislature; but the legislature is itself a body of representatives chosen by the people. His constituency is equal to that of all the members of the legislature taken together. It consists of the people at large acting through counties, districts, or other established subdivisions, and *thus* expressing the will of the State as a public corporation. While the Federal Constitution might prescribe certain requisites, therefore, in order to secure the interests of the Federal Government, the rights of the citizens of all the States, and the welfare of the whole Union; while it might well do this and bind each State to an observance of such requisites, no reason can be assigned why the people of a State—whose peculiar representative and officer in equal degree their Senator is—might not prescribe *other* qualifications, in addition, for the purpose of protecting their separate interests, rights, and welfare. I agree, of course, that such additional requisites must not only be consistent with those specified in the Constitution of the United States, but with the whole spirit and tenor of that instrument. No mischief can result to the Union or to other States from this course of decision; and it leaves to the States that degree of independence, that reservation of powers, which the tenth amendment to the Constitution so plainly inculcates.

"There is no conflict between the Constitution of the United States and the constitution of the State of Illinois. They are perfectly consistent. Now, so far as my learning extends there is no principle more firmly established in the law of England and of America than this: that whenever two enactments can stand together—whether they be called constitutions, statutes, or by what name soever—they *shall* stand together, and *both* shall be obeyed.

"It is suggested, however, that the legislatures of the States derive their power of electing Senators from the Constitution of the United States and not from their respective State constitutions. But this, if admitted to its full extent, will be found immaterial. It is not a power conferred on any legislature as matter of gift or permission from the Federal Government, but as a matter of right, and because the legislature represents the people and acts only as an agent for the people. Surely, I submit, the Constitution of the United States never designed to exalt the agent above the principal, the creature above the creator, the minister above the sovereign, as this proposition assumes."

[Thirty-fourth Congress—Third session.]

JAMES HARLAN,

Senator from Iowa from March 4, 1855, *to January* 12, 1857, *and from January* 29, 1857, *till May* 15, 1865, *when he resigned.*

December 13, 1854, the legislature of Iowa met in joint convention in the hall of the house of representatives for the purpose of electing a United States Senator for the term beginning March 4, 1855. After several ineffectual ballots and adjournments they met January 5, 1855, and adjourned to 10 o'clock of the next day. After this adjournment of the joint convention the senate returned to its own chamber and adjourned to the same hour. When the senate met January 6, it at one adjourned till 9 o'clock, January 8. The senate, therefore, not being in session after 10 o'clock on January 6, did not proceed to the hall of the house as a body, though certain members of the senate attended. The body thus assembled consisted of a majority of the house and a minority of the members of the senate, together constituting a majority of the members of the convention. They proceeded to ballot, and Mr. Harlan received 52 votes (52 being a majority of the members of the joint convention), and was declared duly elected. The senate of Iowa sent resolutions to the United States Senate protesting against the validity of the election. Mr. Harlan was admitted to the seat December 3, 1855, the first day that Congress met in the term for which he was elected. December 15, 1856, the subject was referred to the Committee on the Judiciary. January 5, 1857, the committee reported the proceedings of the Iowa legislature and the resolution "that the seat of the aforesaid gentleman be declared vacant," which resolution passed the Senate January 12, 1857, by a vote of 28 yeas to 18 nays. The question to be decided by the Senate, which was debated at great length, was whether the body electing Mr. Harlan was the *legislature* of Iowa within the meaning of the first clause of the third section of Article I of the Constitution; whether it was essential to the validity of the election that the senate as a body should be present, or whether a majority of the individual members of the convention constituted the *legislature* even if the senate as a body was not present, nor even a majority of the members composing the senate. Extracts from speeches, which are given below, give a full statement of the facts and points discussed by the Senate.

The history of the case here given consists of an extract from a speech of Mr Bayard, of Delaware, in support of the resolution reported by the committee, taken from page 249 of the Congressional Globe, 3d sess. 34th Cong., 1856–'57; an extract from a speech of Mr. Seward, of New York, in opposition to the resolution, taken from pages 260, 261 of the same volume; a transcript of the proceedings of the Senate relating to the case from Senate Journals, 2d sess. 33d Cong., 1st and 2d sess. 34th Cong., and 3d sess. 34th Cong.; and the report of the committee from Senate Reports, 3d sess. 34th Cong., Report No. 300.

The debates in the case are found in the Congressional Globe, 3d sess., 34th Cong., 1856–'57. Special references to the debates of each day are inserted below.

[Extract from speech of Mr. Bayard delivered January 7, 1857.]

"The substantial facts of the case I understand to be these: A resolution was passed in the house of representatives of Iowa on the 13th of December, 1854, proposing to the senate of Iowa to meet in joint convention on the 15th of December for the purpose of electing a Senator of the United States. The resolution was amended by the senate by fixing 2 o'clock or 2.30 o'clock of the same day for the joint meeting. The house concurred in the amendment, and the bodies went into joint convention on that day, a quorum of each house being present when they met. They proceeded to ballot, and having balloted ineffectually they adjourned at various times—on one occasion, I think, from the 14th of December, 1854, to the 5th of January, 1855. On the 5th of January they met, and still failed to elect a Senator. They adjourned to 10 o'clock on Saturday morning, the 6th of January. The senate (as throughout the whole of these proceedings it appears each house did) after they separated returned to their own chamber and adjourned to the same hour on the next day. When the senate met at 10 o'clock on the 6th of January they, without doing any business whatever, adjourned to Monday at 9 o'clock. This adjournment was carried by a vote of the majority, on the yeas and nays—16 to 15—the whole body, consisting of thirty-one members, being present. The senate of Iowa was, therefore, not in session on Saturday after 10 o'clock.

"The house of representatives met—at what hour I do not know; but after transacting appropriate business as a house of representatives they proceeded to receive, not the senate of Iowa, which was not in session, but to receive members of the senate of Iowa as members of the joint convention; and when those members were assembled there, together with the members of the house, they constituted a majority of the two branches combined, that is, a majority of the whole number of persons in the convention. But there was present—I speak now of persons present in the sense of legal presence, as evidenced by the vote—only a majority of the house and a minority of the senate, a quorum of one body and not a quorum of the other. The speaker of the house assumed that the members thus assembled were a regularly-organized convention of the legislature with the power to elect a United States Senator. No vote was taken by the convention

on that point. An appeal was taken from the decision and it was contended that the house ought to decide whether it was organized. That appeal the speaker denied, and there was no vote taken by the convention on that question at all. The roll was called, and as a majority of the members of both branches (not a majority of each branch) answered to their names the speaker declared that the joint convention was regularly organized according to its adjournment, and they proceeded to vote for a United States Senator. After electing first a teller in lieu of the senate teller, who was absent, and also a president *pro tempore* of the convention, the members proceeded to vote *viva voce* for a Senator of the United States. A majority of the members of the house of representatives voted, but only fifteen senators voted on that occasion.

"These are the real facts of the case as they appear from the journals and papers. On the vote to which I have just alluded being taken, it was declared that the honorable gentleman who now holds the seat was regularly elected to the Senate of the United States; and he came here and was admitted. The senate of Iowa met on the Monday morning next after the adjournment of Saturday, and after this alleged election had taken place, and their first act was to protest against it as done without their authority as a co-ordinate branch of the legislature of Iowa.

"It will be observed also from the facts of this case that the journals show that on all occasions when the two houses met they met as houses; a message was sent from one house to the other. The record shows that the senate, preceded by its president, came to the hall of the house of representatives, and the members of the senate had seats assigned them as a co-ordinate branch of the legislature; and after that was done, at all previous meetings, they proceeded to vote. On this occasion there was no senate in session; but the record shows that several members of the senate, without saying how many, were present. The fact is conceded, I understand, that there were but fifteen members of the senate who voted on that occasion, the whole senate consisting of thirty-one; and hence less than a quorum of the senate participated in the election.

"On this state of facts the question which I suppose to arise is, whether 'the legislature' of a State, under the language of the Federal Constitution delegating to the legislature the right to elect Senators of the United States, is to be taken to mean the individual members of the legislature or the body or bodies of which the legislature is composed. I suppose the term as used in the Constitution means the bodies of which the legislature is composed. The honorable Senator from Georgia, if I appreciate his argument, insists that the power being delegated to the legislature is vested in the members of the legislature, and that whenever a majority of the members of the whole legislature under a law such as that existing in Iowa vote for a man he is elected, though one of the co-ordinate branches of that legislature may not vote for him, and may, as a body, refuse to go into an election. Sir, I hold it to be a principle of law which has, I think, no exception that where two integral bodies are authorized to do an act it cannot be done without the consent of those two integral bodies. They must both be present and act in the matter or there can be no validity in the act done. This is a universal law. I can call to mind no case where a contrary principle prevails, whether relating to legislative action or corporate action. Indeed, in reference to corporations it has been decided over and over again that where there are two integral bodies who must concur in an act they must both be present and act upon the matter as bodies, not as individuals."

[Extract from speech of Mr. Seward delivered January 9, 1857.]

"The objections rest on these grounds:

"First. That the legislature of Iowa consists of two co-ordinate branches.

"Second. That it can do no valid act without the co-ordination and co-operation of both of those branches, each acting, or at least appearing in the transaction distinctly by a majority of this branch, or a quorum of it.

"I think the objection is unsound. The legislature of Iowa sustains double relations—one a local one, as the law-making authority of Iowa; the other, Federal, an electoral college to choose Senators in Congress from Iowa. In the one relation, it acts exclusively under the constitution of Iowa; in the other, exclusively under the Constitution of the United States. I may concede that in the former relation it must act by independent co-operation or co-ordination of both houses in all cases.

"I admit that the regulations, which are under review, do require the two houses to resolve themselves into one common body, in which the separate identity or individuality of those separate branches is extinguished, for the purpose of choosing a Senator in Congress. And that, when the merger has been made, and the convention constituted, it is independent of each of the two branches, and as to that transaction supersedes them both, and cannot be terminated or arrested by its own act, or by the concurrent and co-ordinate action of the two houses, being a creation of both.

"In this view, the appearance of the senators in their collective capacity at the convention was merely formal, proper in itself, but of no essential value; and the failure of the

senators to practice the same form cannot vitiate the election, nor can the subsequent protest of the senate.

"It is alleged that such a complete extinguishing of the two houses of the legislature is unconstitutional.

"But it is too late to raise that question. Legislatures in the States are divided into two distinct houses, whose members differ generally in qualifications or in terms of service, to secure delay and deliberation and moderate collision in acts of legislation. But this very delay, deliberation, and collision practically disqualifies such bodies from acting as an electoral college.

"It was found necessary in the very beginning of the Government to provide for bringing the two branches of the legislature to an agreement in that case.

"The expedient adopted was the simple one, probably the only practicable one, of merging the two houses into one, for this purpose. The expedient has been adopted in nearly all the States, and is used either in the first instance, as in Iowa, or a last alternative, in case of disagreement, as in New York, Georgia, and Virginia. It has been acquiesced in by the Senate of the United States from the first, and is therefore settled and constitutional.

"Nor is it without reason. The legislature of a State is merely a college of suffragans interposed between the Senate of the United States and the people of the States. The choice of the legislature is the indirect choice of the people of the State.

"The function of choice is in no sense one of a legislative nature. It is an extra-legislative act, an executive transaction, an action, so to speak, *ex officio*. The Constitution of the United States gives supreme right to Congress to prescribe in what manner the legislature of a State shall perform that act independently of all State constitutions.

"The Congress of the United States has practically waived this right, and devolved that duty on the legislature of Iowa, as it was authorized to do by the Constitution of the United States.

"The manner prescribed by the legislature of Iowa does not conflict with any article of the Constitution of the United States. It would not be at all affected by any conflict with the constitution of Iowa, insomuch as no control over the subject whatever resides in the people of Iowa by whom the constitution was made.

"Mr. President, this transaction is a judicial one. I have approached it, I trust, free from partiality or prejudice. The question is an important one. The decision may be drawn into a precedent to affect hereafter the rights of sixty States, and the safety, welfare, and union of this confederate Republic hundreds of years hence, when this people shall number, not as now by tens, but by hundreds of millions.

"I therefore confine my judgment to this case as it stands on the facts. I do not prejudge other cases which shall present other facts, nor lay down principles for other and extreme cases. I can foresee possible abuses to come from a misapplication of the principles I have adopted. But abuses will attach themselves to all principles as barnacles will to the smoothest and strongest bottoms.

"I repose on my conclusion with the more confidence because it is one which tends to secure the Senate, and through it the Federal Government, against the efforts of faction and of ambition to disorganize the Union and subvert the republican Government here, which is the chief guarantee of civilization everywhere."

SATURDAY, *March* 3, 1855.

The President *pro tempore* laid before the Senate a letter of the president of the senate of Iowa, accompanied by resolutions of the senate of that State, relative to the joint convention alleged to have been held by the general assembly of Iowa for the election of an associate judge and a United States Senator; which was read.

Ordered, That it lie on the table.

MONDAY, *December* 3, 1855.

Mr. Jones, of Iowa, presented the credentials of the Hon. James Harlan, chosen a Senator by the general assembly of the State of Iowa "to represent" the said State "in the Senate of the United States;" which were read.

On motion by Mr. Mason, the resolutions of the senate of the State of Iowa, communicated March 3, 1855, were read.

The oath prescribed by law was administered to Mr. Harlan, and he took his seat in the Senate.

[These resolutions are found in the report of the committee given below.]

THURSDAY, *August* 14, 1856.

On motion by Mr. Jones, of Iowa, that the credentials of the Hon. James Harlan, of Iowa, with the resolutions of the senate of Iowa relative to his election as a Senator from that State, on the files of the Senate, be referred to the Committee on the Judiciary.

Ordered, That the further consideration of the motion be postponed to and made the special order of the day for to-morrow at 12 o'clock.

[Remarks in regard to the reference of the subject to a committee are found on page 2098 of the Congressional Globe, part 3, 1st sess. 34th Cong., 1855–'56.]

FRIDAY, *August* 15, 1856.

On motion by Mr. Hunter that the special order of the day be postponed, and that the Senate proceed to the consideration of the bill (H. R. 201) making appropriations for certain civil expenses of the Government for the year ending the 30th of June, 1857, it was determined in the affirmative—yeas 27, nays 19.

[The vote may be found on page 593 of Senate Journal, 1st and 2d sess. 34th Cong., 1855–'56.]

[A debate on the subject of postponement is found on pages 2129 and 2130 of the Congressional Globe, part 3, 1st sess. 34th Cong., 1855–'56.]

MONDAY, *December* 15, 1856.

The Senate resumed the consideration of the motion made by Mr. Jones, of Iowa, the 14th of August last, to refer the credentials of the Hon. James Harlan to the Committee on the Judiciary.

On motion by Mr. Bayard to amend the motion by striking out "to the Committee on the Judiciary" and inserting "a select committee,"

The question was put on referring the same to the Committee on the Judiciary, and it was determined in the affirmative—yeas 31, nays 13.

[The vote is found on page 42 of the Senate Journal, 3d sess. 34th Cong., 1856–'57.]

So it was

Ordered, That the credentials of the Hon. James Harlan, of the State of Iowa, be referred to the Committee on the Judiciary.

[A statement of the facts of the case by Mr. Harlan, also a debate on the question whether the subject should more properly go to the Committee on the Judiciary or to a select committee, are found on pages 112–117 of the Congressional Globe, 3d sess. 34th Cong., 1856–'57.]

MONDAY, *January* 5, 1857.

Mr. Butler, from the Committee on the Judiciary, to whom were referred the credentials of the Hon. James Harlan, a Senator from the State of Iowa, reported the following resolution:

"*Resolved*, That the seat of the aforesaid gentleman be declared vacant."

Ordered, That the report be printed.

REPORT OF COMMITTEE.

[The Committee on the Judiciary consisted of Messrs. Butler (chairman), Toucey, Bayard, Geyer, Toombs, and Pugh.

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1857.—Ordered to be printed.

Mr. Butler made the following report:

The Committee on the Judiciary, to whom were referred the credentials of the Hon. James Harlan and the protest of the senate of Iowa, have had the same under consideration, and submit the following statement:

The following proceedings were had in the legislature of the State of Iowa in the election of a United States Senator:

SATURDAY, *December* 9, 1854.

"*Resolved* (*the senate concurring*), That the house of representatives will meet the senate in the hall of the house on Tuesday next at 2 o'clock p. m., for the purpose of electing a Senator of the United States and judges of the supreme court.

"On motion,

"The resolution was laid on the table."

DECEMBER 12, 1854.

Resolution fixing the time for the election of a United States Senator was taken up and amended so as to fix Friday, the 15th instant, as the day for an election.

"Message from the senate, by Mr. Rankin, their secretary:

"Mr. SPEAKER: I am instructed by the senate to inform the house that the senate has concurred in the house resolution to go into joint ballot on Friday, the 15th instant,

for the purpose of electing a United States Senator and supreme judges, with the following amendment, viz: To strike out the words 'Friday, the 15th instant, at 2 o'clock,' and insert this: 'Wednesday evening, at 2.30 o'clock.'

"Agreed to.

"Joint convention of the two houses; the president of the senate acting as president of the convention, and the clerk of the house acting as secretary."

On motion, the convention proceeded to the election of a United States Senator for six years, from and after the 4th day of March next.

"The president appointed Mr. Workman teller on the part of the senate. The speaker appointed Mr. Kinert teller on the part of the house."

The convention proceeded to a vote, which resulted in no choice.

The convention proceeded to a second ballot, which resulted in no choice.

The convention adjourned until to-morrow at 10 o'clock.

DECEMBER 14, 1854.

By order of the president the roll of the convention was called.

Same tellers as yesterday.

Motion to adjourn until Thursday next at 10 o'clock.

Motion prevailed.

"The president announced the convention adjourned until 10 o'clock a. m. Thursday, December 21."

THURSDAY, *December* 21, 1854.

Joint convention of the two houses; the president of the senate acting as president of the convention, and the clerk of the house acting as secretary.

Same tellers acting.

The president having announced the purposes of the convention, and directed the roll to be called—

"The convention proceeded to vote for a United States Senator for the term of six years, from and after the 4th day of March next."

After several ballots without making a choice, the convention adjourned until the 5th day of January, 1855.

FRIDAY, *January* 5, 1855.

Convention met.

The president announced the purposes of the convention.

After several ineffectual ballots, on motion, the convention adjourned until to-morrow morning 10 o'clock.

SATURDAY, *January* 6, 1855.

"It being the hour of 10 o'clock a. m., the speaker of the house announced the same, and the special order to be a joint convention of the senate and house of representatives, pursuant to adjournment, for the purposes of electing a United States Senator and judge of the supreme court.

"A committee of three was appointed to wait upon the senate, and inform that body that the house of representatives was now ready to receive the senate in joint convention," &c.

"The committee appointed to wait on the senate reported that they had discharged that duty, by proceeding to the senate chamber and delivering their message, and informing the secretary of the senate thereof; that the secretary informed the committee that the senate had adjourned over to Monday next.

"A number of the members of the senate entered the hall of the house without their president and took their seats.

"The speaker announced that the joint convention of the senate and house of representatives was now in session, pursuant to adjournment, for the purposes of electing a judge of the supreme court and a United States Senator.

"Mr. Samuels rose to a question of order, to wit: Was the joint convention properly convened? The speaker announced that the convention had now convened.

"Mr. Samuels appealed from the decision of the speaker, and asked for the yeas and nays, and insisted on his appeal being decided only by the house of representatives.

"The roll of the joint convention was called, and the following members of the convention answered to their names, being a majority of both branches of the general assembly.

[Here follow the names of fifty-seven members.]

"Those members of the convention and members of the house of representatives, except Mr. Franklin, excused, who did not answer to their names refused to answer, or retired from the hall during the call of the roll.

"The speaker announced that a majority of the members of the general assembly being present, that there was a quorum of the joint convention now convened, pursuant to ad-

journment, and that the appeal of Mr. Samuels could not be taken to the members of the house of representatives only.

"On motion of Senator Anderson, William W. Hamilton, a senator from Dubuque County, was elected president *pro tempore* of the convention.

"The president of the senate still being absent,

"The speaker of the house of representatives in his chair, and the clerk of the house of representatives acting as secretary of the joint convention,

"The roll of the convention was called, and the following members of the convention did not answer to their names, to wit.

[Here follow the names of forty-four members.]

"On motion of Mr. Russell,

"The sergeant-at-arms was directed to notify members of the convention who had not answered to their names that the convention was now convened, and to request their attendance.

"Senators Ramsay and Thurston appeared on the floor of the convention and desired to be considered as not acting in the convention.

"The sergeant-at-arms reported that he had performed his duty, as required by the convention; that a few of the members he could not find.

"On motion of Mr. Conkey,

"Further proceedings under the call were dispensed with.

"Mr. Workman, teller on the part of the senate, being absent,

"Mr. Needham was appointed in his stead,

"Mr. Kinert acting as teller on the part of the house.

"The convention proceeded to the election of a second associate judge of the supreme court;" after which "the convention proceeded to the election of a United States Senator for the State of Iowa for the term of six years from and after the 4th of March next. * * *

"Mr. Anderson nominated James Harlan, of Henry County.

"The convention proceeded to vote for a United States Senator, being the ninth vote, which resulted as follows:

"Those voting for James Harlan were—

[Here follow the names of fifty-two members.]

"Messrs Clark, of Marion, and Neely voted for Bernhart Henn; Mr. McAchran voted for Wm. McKay; Mr. Witter voted for James Grant. James Harlan having received a majority of all the votes cast and a majority of the whole number of the members of the general assembly, was declared duly elected a Senator of the United States for the State of Iowa for the term of six years from and after the 4th day of March next.

"The certificate of election was made out and duly attested in the presence of the convention," &c. * * *

HALL OF THE HOUSE OF REPRESENTATIVES,
January 6, 1855.

This will certify that, at an election by the general assembly of the State of Iowa, in joint convention, on Saturday, the 6th day of January, A. D. 1855, James Harlan was duly elected a Senator to represent this State in the Senate of the United States for the term of six years from and after the 4th day of March next.

WILLIAM W. HAMILTON,
President pro tempore.
REUBEN NOBLE,
Speaker of the House of Representatives.

Attest:

JOHN R. NEEDHAM,
DAVID KINERT,
Tellers.

On motion of Mr. Hills, the joint convention adjourned *sine die*, and the members of the senate retired.—*Journal of the House of Representatives of the State of Iowa.*

MONDAY MORNING, *January* 8, 1855.

Mr. Coolbaugh offered the following:

"Whereas it is reported that the journal of the house of representatives, as read this morning in the presence of the house, alleges that a joint convention of the general assembly of this State was held in the hall of the house on Saturday, the 6th instant; and,

"Whereas it is alleged in said journal that said joint convention proceeded to elect one Norman W. Isbell as an associate judge of the supreme court of this State and one James

Harlan as a Senator of the United States for the term of six years from the 4th day of March next: Therefore,

"*Resolved*, That inasmuch as the senate has no knowledge of any such joint convention, and did not participate in the proceedings, therefore it hereby protests against the action of the said so-called joint convention, and declares the same to be void and of no effect.

"*Resolved*, That a copy of this preamble and resolution be signed by the president and certified to by the secretary of the senate, be presented to the governor of this State, and also a copy forwarded to the presiding officer of the Senate of the United States, with the request to lay the same before that body."

Upon the adoption of which, the yeas and nays, being demanded, were ordered, and were as follows—yeas 17, nays 14.

The preamble and resolutions were adopted.—*Journal of the senate of the State of Iowa*, 1854–'55.

AN ACT to provide for the election of United States Senators and other officers.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That at each and every regular session of the general assembly of this State next preceding the expiration of the constitutional term of service of a United States Senator, or at any session when a vacancy shall exist, at an hour to be designated by a resolution of either branch, with the concurrence of the other branch of the general assembly, the members of both houses thereof shall meet in convention in the hall of the house of representatives, for the purpose of electing a Senator or Senators by joint vote, in pursuance of the Constitution of the United States, to represent this State in the Senate of the United States.

SEC. 2. The president of the senate, or in his absence the speaker of the house of representatives, shall preside over the deliberations of the convention; and in the absence of both a president *pro tempore* shall be appointed by joint vote.

SEC. 3. At any time prior to meeting in convention as aforesaid, after the time for meeting has been designated as aforesaid, each branch of the general assembly shall appoint one teller, and the two tellers thus appointed shall act as judges of the election.

SEC. 4. The secretary of the senate and the chief clerk of the house of representatives shall each keep a fair and correct record of the proceedings of the convention, which shall be entered upon the journals of each branch of the general assembly. The chief clerk of the house of representatives shall act as secretary to the convention.

SEC. 5. The names of the members of the general assembly shall be arranged by the secretary in alphabetical order, and each member shall vote in the order in which his name stands when thus arranged.

SEC. 6. When the convention shall be organized as aforesaid the members present shall proceed to choose *viva voce* a Senator or Senators, as the case may be, to represent this State in the Senate of the United States. The name of the person voted for and of the members voting shall be entered in writing by the tellers, who shall, after the secretary shall have called the names of the members a second time, and the name of the person for which each member has voted, report to the president of the convention the number of votes given for each candidate.

SEC. 7. If neither of the candidates shall receive the votes of a majority of the members present a second poll may be taken, and so from time to time until some one of the candidates shall receive a majority of the votes of the members present.

SEC. 8. If the election shall not be completed at the first meeting the president shall adjourn the convention whenever and to such time as a majority of the members then present shall determine; and so from time to time, until some one of the candidates shall receive a majority as aforesaid.

SEC. 9. When any person shall have received a majority of the votes aforesaid the president of the convention shall declare him to be duly elected a Senator to represent this State in the Senate of the United States; and he shall in the presence of the members of both houses sign two certificates of election, attested by the tellers, one of which he shall transmit to the governor, and the remaining one shall be preserved among the records of the convention and entered at length on the journals of each house of the general assembly.

SEC. 10. Upon the reception of said certificate the governor shall cause a credential to be made out, with the great seal of the State affixed thereto, and cause it to be delivered to such Senator-elect, which credential shall be in form following.

[Here follows the form of the credential.]

[Laws of Iowa, 1847, pages 92 and 93.]

The Constitution of the United States contains the following provision in reference to the election of United States Senators:

"SEC. 4. The times, places, and manner of holding elections for Senators and Represent-

atives shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

And the clause under which the committee are acting as to the qualification of the gentleman is as follows:

"SEC. 5. Each House shall be the judge of the elections, returns, and qualifications of its own members." * * *

STATE OF IOWA, *to wit:*

The general assembly of this State, on the sixth day of January, one thousand eight hundred and fifty-five, having, in pursuance of the Constitution of the United States of America, chosen James Harlan a Senator to represent this State in the Senate of the United States, I, James W. Grimes, governor of the State of Iowa, do by these presents certify the same to the Senate of the United States.

Given under my hand and the great seal of the State of Iowa, this twentieth day of January, one thousand eight hundred and fifty-five.

[L. S.] JAMES W. GRIMES.

By the governor:

GEORGE W. McCLEARY,
Secretary of State.

The foregoing statement of facts and recital of clauses of laws and the Constitution present all the questions involved in the controversy growing out of the contested election under consideration. From the view which a majority of the committee have taken of these questions, they have come to the conclusion that the sitting member (Mr. Harlan) has not been duly elected a Senator of the United States by the *legislature* of Iowa.

Resolved, That the seat of the aforesaid gentleman be declared vacant.

A. P. BUTLER,
Chairman.

TUESDAY, *January* 6, 1857.

The Senate proceeded to consider the resolution reported by the Committee on the Judiciary on the credentials of the Hon. James Harlan, a Senator from the State of Iowa; and,

On motion by Mr. Bayard that the further consideration of the resolution be postponed until half-past 12 o'clock to-morrow, it was determined in the negative.

After debate,

An amendment being proposed by Mr. Toombs,

On motion by Mr. Weller,

Ordered, That the further consideration of the resolution be postponed until to-morrow.

[The debate is found on pages 238–247 of the Congressional Globe referred to in the head-note.]

WEDNESDAY, *January* 7, 1857.

The Senate resumed the consideration of the resolution reported from the Committee on the Judiciary on the credentials of the Hon. James Harlan, a Senator from the State of Iowa; and,

After debate and the consideration of executive business, the Senate adjourned.

[The debate is continued on pages 248–257 of the Congressional Globe referred to in the head-note.]

FRIDAY, *January* 9, 1857.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary on the credentials of the Hon. James Harlan, a Senator from the State of Iowa; and,

After debate,

On motion by Mr. Mallory, the Senate adjourned.

[The debate is continued on pages 260–270 of the Congressional Globe referred to in the head-note.]

MONDAY, *January* 12, 1857.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary on the credentials of the Hon. James Harlan, a Senator from the State of Iowa.

On motion by Mr. Toombs to amend the resolution by striking out all after the word "resolved" and inserting:

"That James Harlan is entitled to his seat as a Senator from Iowa,"

It was determined in the negative—yeas 18, nays 27.

On motion by Mr. Butler, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bell of New Hampshire, Bell of Tennessee, Brown, Collamer, Durkee, Fessenden, Fish, Foot, Foster, Hale, Houston, Pugh, Seward, Slidell, Toombs, Trumbull, Wade, and Wilson.

Those who voted in the negative are Messrs. Allen, Bayard, Benjamin, Biggs, Bigler, Butler, Cass, Clay, Comegys, Crittenden, Dodge, Evans, Fitzpatrick, Geyer, Hunter, Iverson, Jones of Iowa, Mallory, Mason, Pratt, Reid, Rusk, Sebastian, Stuart, Toucey, Weller, and Wright.

On motion by Mr. Butler, the resolution was amended to read:

"*Resolved*, That the seat of the Hon. James Harlan be declared vacant."

On the question to agree to the resolution it was determined in the affirmative—yeas 28, nays 18.

On motion by Mr. Seward, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allen, Bayard, Benjamin, Biggs, Bigler, Butler, Cass, Clay, Comegys, Crittenden, Dodge, Evans, Fitzpatrick, Geyer, Hunter, Iverson, Jones of Iowa, Mallory, Mason, Pearce, Pratt, Reid, Rusk, Sebastian, Stuart, Toucey, Weller, and Wright.

Those who voted in the negative are Messrs. Bell of New Hampshire, Bell of Tennessee, Brown, Collamer, Durkee, Fessenden, Fish, Foot, Foster, Hale, Houston, Pugh, Seward, Slidell, Toombs, Trumbull, Wade, and Wilson.

[The debate is concluded on pages 287–299 of the Congressional Globe referred to in the head-note.]

[Thirty-fourth and Thirty-fifth Congresses.]

FITCH AND BRIGHT, AND LANE AND McCARTY, *of Indiana.*

February 4, 1857, Graham N. Fitch was elected Senator by the legislature of Indiana for the term ending March 3, 1861, and Jesse D. Bright for the term ending March 3, 1863. February 9, 1857, Mr. Fitch's credentials were presented, and at the same time a protest of members of the legislature against the legality of the election. After debate on the *prima facie* right of Mr. Fitch to the seat, he was admitted, and his credentials and the protest were referred to the Committee on the Judiciary. The ground of the protest was that these Senators were "not elected by the legislature of Indiana, but by a convocation of a portion of the members thereof, not authorized by any law of the State, by resolution adopted by the legislature, or by any provision of the Constitution of the United States." It appears that there was no law in Indiana providing for the time, place, or manner of electing Senators. There was a clause in the State constitution making it the duty of the speaker of the house of representatives to open and publish the votes for governor and lieutenant-governor in the presence of both houses of the general assembly. January 12, 1857, the two houses met for this purpose, a majority of both houses being present. At the close of this business the presiding officer adjourned the convention (so called) until February 2. Meantime the senate passed a resolution protesting against this proceeding and disclaiming all connection with the so-called convention. A minority of the senate, but a majority of the members composing the two houses, attended the adjourned meeting, and after a subsequent adjournment elected Messrs. Fitch and Bright as Senators. February 26 and March 13, 1857, the committee reported resolutions that Mr. Fitch and the persons protesting against his election be permitted to take testimony on disputed facts. December 17, 1857, the credentials of Mr. Bright, who had taken his seat March 4, were referred, together with the credentials of Mr. Fitch, to the same committee. January 21, 1858, the committee again reported a resolution that the sitting members and the persons protesting be permitted to take testimony. January 25 the minority of the committee reported against the adoption of the resolution on the ground that the election was "obviously illegal." The resolution passed the Senate February 16, 1858. May 24, 1858, the committee reported the testimony and the resolution that the sitting members were entitled to their seats. The resolution was agreed to June 12, 1858.

January 24, 1859, a memorial of the State of Indiana was presented representing that it was the wish of the State that Henry S. Lane and William Monroe McCarty be admitted to seats in the Senate as the only legally chosen Senators. February 3, 1859, the Committee on the Judiciary, to whom were referred the memorial, reported that there was no vacancy in the Senate from the State of Indiana, and that the election of Messrs. Lane and McCarty was void; that the legislature of Indiana possessed no authority to revise the decision of the Senate of the United States on the right of Messrs Fitch and Bright to the seats, a decision which was final and made by an authority having exclusive jurisdiction, and asked to be excused from the further consideration of the subject. February 3, 1859, the minority reported that the former decision of the Senate was not necessarily final; that under the circumstances the subject should be re-examined; and that if the Senate should find that Messrs Lane and McCarty were legally elected, they should be admitted to the seats. February 14, 1859, the Senate agreed to the report of the committee and resolved that the decision of June 12, 1858, affirming the right of Messrs Fitch and Bright to their seats, "was a final decision of all the premises then in controversy, and conclusive, as well upon the legislature of Indiana, and all persons claiming under its authority, as upon the Senators named in the resolution."

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journals, 3d sess. 34th Cong., 1st sess. 35th Cong., and 2d sess. 35th Cong., together with certain of the reports made in the case.

Special references to the debates found in the Congressional Globe of the 3d sess. of 34th Cong. and the 35th Cong., are inserted below, and special references to all the reports are given in footnotes.

[Third sessson of the Thirty-fourth Congress.]

MONDAY, *February* 9, 1857.

Mr. Bright presented the credentials of the Hon. Graham N. Fitch, elected a Senator by the legislature of Indiana, to serve in the Congress of the United States until the 4th day of March, 1861; which were read.

Mr. Bright submitted the following resolution for consideration:

"*Resolved*, That the President do administer the oath required by the laws to Graham N. Fitch as a Senator from the State of Indiana."

Mr. Trumbull presented resolutions of the senate of the State of Indiana respecting the recent election of Senators by the legislature of that State, and a protest of members of the house of representatives of the State of Indiana against the legality of the election of the Hon. Jesse D. Bright and the Hon. Graham N. Fitch as Senators in the Congress of the United States; which were read; and,

After debate,

On motion by Mr. Trumbull that the credentials, the resolution submitted by Mr. Bright, and the resolutions of the senate of Indiana, with the protest of members of the house of representatives of the general assembly of Indiana, presented by Mr. Trumbull, be referred to the Committee on the Judiciary, it was determined in the negative—yeas 12, nays 33.

On motion by Mr. Seward, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Collamer, Crittenden, Fessenden, Foot, Foster, Hale, Harlan, Nourse, Seward, Thompson of Kentucky, Wade, and Wilson.

Those who voted in the negative are Messrs. Adams, Allen, Bayard, Bell of Tennessee, Biggs, Bigler, Bright, Brown, Butler, Cass, Clay, Dodge, Evans, Fitzpatrick, Geyer, Green, Hunter, James, Johnson, Jones of Iowa, Mallory, Mason, Pratt, Pugh, Reid, Rusk, Sebastian, Slidell, Stuart, Toombs, Toucey, Weller, and Yulee.

The Senate proceeded, by unanimous consent, to consider the resolution submitted by Mr. Bright, and the resolution was agreed to; and

The oath prescribed by law was administered to Mr. Fitch, and he took his seat in the Senate.

* * * * * * *

On motion by Mr. Rusk that the credentials of the Hon. Graham N. Fitch, the resolutions of the senate of Indiana, and the protest of members of the house of representatives of Indiana respecting the recent election of Senators by the legislature of that State, be referred to the Committee on the Judiciary,

On motion by Mr. Stuart, the Senate adjourned.

[The debate is found on pages 193–210 of the Appendix to the Congressional Globe, 3d sess., 34th Cong., 1856–'57. It is largely on the *prima facie* right of Mr. Fitch to the seat.]

TUESDAY, *February* 10, 1857.

The Senate resumed the consideration of the motion of Mr. Rusk to refer the credentials of the Hon. Graham N. Fitch, with the resolutions of the senate of Indiana and the protest of members of the house of representatives of that State in relation to the recent election of Senators by the legislature of Indiana, to the Committee on the Judiciary; and the motion was agreed to.

[The debate is found on pages 210–215 of the Appendix to the Congressional Globe, 3d sess., 34th Cong., 1856–'57. It is mainly on the question whether the credentials should be referred to the Committee on the Judiciary or to a select committee.]

THURSDAY, *February* 12, 1857.

Mr. Trumbull presented a protest, signed by members of the house of representatives of Indiana, against the legality of the election by the legislature of that State of Jesse D. Bright and Graham N. Fitch as Senators in the Congress of the United States; which was referred to the Committee on the Judiciary.

FRIDAY, *February* 20, 1857.

Mr. Trumbull presented copies of the proceedings of the legislature of Indiana, and other papers, in relation to the recent election of Senators to represent that State in the Congress of the United States; which were referred to the Committee on the Judiciary.

THURSDAY, *February* 26, 1857.

Mr. Trumbull presented a petition of senators and representatives of the legislature of Indiana, protesting against the election of Graham N. Fitch as a Senator to represent that State in the Congress of the United States; which was referred to the Committee on the Judiciary.

Mr. Toombs, from the Committee on the Judiciary, to whom were referred the credentials of the Hon. Graham N. Fitch as a Senator in Congress from the State of Indiana, the proceedings of the senate of Indiana, and the protest of members of the house of representatives of the said State against the election of the Hon. Graham N. Fitch, submitted a report (No. 427), accompanied by the following resolution:

"*Resolved*, That in the case of the contested election of the Hon. Graham N. Fitch, a Senator returned and admitted to his seat from the State of Indiana, that the sitting member and all persons protesting against his election be permitted to take testimony on the allegations of the protestants and the sitting member, touching all matters of fact therein contained, before any judge of the district court of the United States, or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis."*

[A short debate as to whether the resolution is a privileged question or not is found on pages 907, 908 of the Congressional Globe, 3d sess. 34th Cong., 1856–'57.]

* This report is found in Senate Reports, 3d sess. 34th Cong., Report No. 427. It is not printed here, as it is substantially the same as the report made March 13, 1857, on the same subject, which is printed.

MONDAY, *March* 2, 1857.

The Senate proceeded to consider the resolution reported by the Committee on the Judiciary on the credentials of the Hon. Graham N. Fitch, a Senator from the State of Indiana; and

After debate,

On motion by Mr. Weller that it lie on the table, it was determined in the affirmative—yeas 28, nays 23.

On motion by Mr. Trumbull, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Adams, Allen, Bayard, Benjamin, Biggs, Brown, Butler, Clay, Crittenden, Douglas, Fitzpatrick, Gwin, Hunter, Iverson, James, Johnson, Mason, Pearce, Pratt, Pugh, Reid, Rusk, Sebastian, Slidell, Stuart, Toombs, Toucey, and Weller.

Those who voted in the negative are Messrs. Bell of New Hampshire, Bright, Brodhead, Cass, Collamer, Dodge, Durkee, Fessenden, Fish, Foot, Foster, Hale, Harlan, Jones of Iowa, Jones of Tennessee, Nourse, Seward, Sumner, Thomson of New Jersey, Trumbull, Wade, Wilson, and Wright.

So it was

Ordered, That the resolution lie on the table.

[A debate on the adoption of the resolution is found on pages 1034-1040 of the Congressional Globe, 3d sess. 34th Cong., 1856-'57.]

MR. BRIGHT'S CREDENTIALS.

Mr. Cass presented the credentials of the Hon. Jesse D. Bright, elected a Senator by the legislature of the State of Indiana, to serve as such until the 4th day of March, A. D. 1863; which were read.

[Special session of Senate, March, 1857.]

WEDNESDAY, *March* 4, 1857.

The credentials of Mr. Bright having been heretofore presented to the Senate, the oath prescribed by law was administered to him by the President *pro tempore*, and he took his seat in the Senate.

MONDAY, *March* 9, 1857.

On motion by Mr. Trumbull,

Ordered, That the papers on file relating to the election of the Hon. Graham N. Fitch by the legislature of Indiana be referred to the Committee on the Judiciary.

[A brief debate took place, which is found on pages 385, 386 of the Appendix to the Congressional Globe, 3d sess. 34th Cong., 1856-'57.]

FRIDAY, *March* 13, 1857.

Mr. Toombs, from the Committee on the Judiciary, to whom were referred the papers relating to the election of the Hon. Graham N. Fitch, by the legislature of the State of Indiana, as a Senator in the Congress of the United States, submitted a report (No. 2), accompanied by the following resolution:

"*Resolved*, That in the case of the contested election of the Hon. Graham N. Fitch, a Senator returned and admitted to his seat from the State of Indiana, that the sitting member and all persons protesting against his election, or any of them, by themselves or their agents or attorneys, be permitted to take testimony on the allegations of the protestants and the sitting member touching all matters of fact therein contained, before any judge of the district court of the United States, or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis."

The Senate proceeded, by unanimous consent, to reconsider the said resolution; and,

A motion having been made by Mr. Trumbull to amend the resolution,

After debate,

On motion by Mr. Mason,

Ordered, That it lie on the table

On motion by Mr. Toombs,

Ordered, That the report and all the accompanying papers be printed.

[The debate which took place this day on the adoption of the resolution is found on pages 392-396 of the Appendix to the Congressional Globe, 3d sess., 34th Cong., 1856-'57.]

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Butler (chairman), Bayard, Toombs, Pugh, Benjamin, Collamer, and Trumbull.]

The committee have had the same under consideration, and find that important matters of fact alleged by the protestants in connection with the manner in which the election of the sitting member was had are denied by him, and that it becomes necessary, in the opinion of the committee, to take the testimony of persons residing in the State of Indiana, for the better ascertainment of these disputed facts. For instance, it is, among other things, alleged by a portion of the protestants that "there was no joint convention of the two houses of said general assembly on said day" on which the election in dispute took place, and that a minority only of the legally sitting senators of Indiana participated in said election, which statements are denied by the sitting member; and he affirms, on the contrary, that "he was elected to said office by a majority of all the members composing the legislature of the State, they being then and for that purpose assembled in joint convention," and that he was elected whilst in such joint convention by a majority of the legally qualified members of the senate of the State and of the legally qualified members of the house of representatives, respectively. For the proper ascertainment of these contested facts, and the better elucidation of the matters in dispute contained in the several protests herewith submitted, and the reply of the Hon. Graham N. Fitch, your committee recommend that leave be given to take testimony in the city of Indianapolis and State of Indiana, and recommend the adoption of the following resolution:

Resolved, That in the case of the contested election of the Hon. Graham N. Fitch, a Senator returned and admitted to his seat from the State of Indiana, that the sitting member, and all persons protesting against his election, or any of them, by themselves, or their agents or attorneys, be permitted to take testimony on the allegations of the protestants and the sitting member touching all matters of fact therein contained, before any judge of the district court of the United States, or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis.

To the Senate of the United States:

The undersigned, duly elected and qualified members of the house of representatives of the general assembly of the State of Indiana, hereby protest against the pretended election of Jesse D. Bright and Graham N. Fitch, on the 4th day of February, A. D. 1857, as Senators of the State of Indiana in the Congress of the United States, the former for the six years from the 4th day of March next, and the latter for the six years from the 4th day of March, 1855, by a portion of the senators and representatives of said general assembly, for the following reasons:

First. There was no agreement of the two houses of the general assembly, by resolutions or otherwise, to proceed to the appointment or election of Senators in Congress on said day, or any other day of the present session of the general assembly.

Second. There was no joint convention of the two houses of the said general assembly on said day; nor was there any law of the State authorizing a joint convention on that or any other day for the appointment or election of United States Senators; nor was there any resolution, or joint resolution, approved or adopted by the two houses of the said general assembly, or either of them, authorizing such joint convention.

Third. Said pretended joint convention was a mere assembly of a portion of the senators and representatives of the said general assembly, not in a legislative capacity, but as individuals, without any authority of law, without precedent in the history of legislature of the State, and having no legislative sanction; and said senators and representatives, when so convened, had no more constitutional right to appoint or elect Senators than any equal number of private citizens of the State.

Fourth. There was not a constitutional quorum of either house of the general assembly present in said pretended joint convention, there being only twenty-three senators and sixty-one representatives, when, by the eleventh section of the fourth article of the constitution of this State, it requires two-thirds of each house to constitute a quorum to do business, and when, by the law of the State, the number of senators is fixed at fifty, and the number of representatives at one hundred, in said general assembly.

Fifth. Because the undersigned, as legally elected and qualified representatives in said general assembly, have been deprived of their constitutional right to assist in the legal election of the Senators in the Congress of the United States by said illegal, revolutionary, and unauthorized election.

* This report, which was the second one made on the credentials of Mr. Fitch, is found in Senate Reports, 3d sess. 34th Cong., Report No. 2. Pages 5-39 of the report are here omitted. They contain certain proceedings of the legislature and additional protests of members thereof.

Sixth. Because the legislature of Indiana, as such legislature, either by separate action of the two houses, or otherwise, as such legislature, had no part or voice in such pretended elections, and the same were in direct violation of the third section of the first article of the Constitution of the United States and the fourth section of the said article.

Seventh. Because said pretended elections are wholly void.

Eighth. Because if said elections are held valid, such decision will destroy the legal existence of the general assembly of this State, and install in its place any mob which may see proper to take forcible possession of the house as a joint convention of the general assembly, without the concurrence of either body, the sanction of the Constitution, or authority of law.

For these and other reasons which might be named, the undersigned protest against the validity of said pretended elections, and ask that the Senate of the United States may declare them null and void.

Given under our hands this 4th day of February, at Indianapolis, A. D. 1857.

S. P. Williams.
Geo. Crawford.
James M. Austin.
J. N. Gordon.
C. M. Stone.
H. W. Sherman.
G. D. Wagner.
Thomas J. Neal.
G. K. Steele.
D. Batterton.
Alex. H. Conner.
M. P. Evans.
Wm. C. Jefferis.
S. B. Ward.
J. D. Conner.
Wm. Grose.
A. B. Price.
John Davis.
N. H. Ballinger.
Geo. C. Merrifield.
Silas Colgrove.
Geo. Moon.
William Hawkins.
John Whitcomb.
D. C. Branham.
J. W. Hutchings.
Robert Boyd.
John M. La Rue, Tippecanoe County.
Marcus C. Smith.
Elijah Vansandt.
Smith Vawter.
Wm. M. Clapp.
R. N. Todd.
Milton Mercer.

The undersigned, a Senator of the United States from the State of Indiana, and now acting as a duly qualified Senator of the United States, submits to the honorable the Judiciary Committee of the body to whom the validity of his election has been referred, the following, as points upon which he believes and is advised that his own rights and the rights of his State require that evidence be taken and be before the committee in order to enable them to decide understandingly and justly in the premises:

First. That he was elected to said office by a majority of all the members composing the legislature of the State, they being then and for that purpose assembled in joint convention.

Second. That he was elected, whilst in such joint convention, by a majority of the legally qualified members of the senate of the State and of the legally qualified members of the house of representatives, respectively.

Third. That in order to ascertain the facts stated in the preceding point, he will be able, by evidence, to show that three of the persons who are contesting his election were not then, and are not now, legally members of the said State senate, and had no right whatever, under the laws and constitution of the State, to be considered, or, in any particular, to act as members of that body; and that this was at the time, and still is, well known to the other contestants.

Fourth. That in the organization of the State senate, according to the constitution, laws, and usage of the State, the lieutenant-governor presides and superintends the admission of the members, and the taking the required oaths of office. That upon this occasion, in violation of such constitution, laws, and usage, the said three members, who were without the expressly required credentials of election, the certificate of the proper and only returning officer, and whose seats were also known to be contested, and on grounds of fraud, also known to be true, were, by a presiding officer, chosen for the purpose by the members of the senate, designated as Republicans, contrary to all law, and by naked wrong, directed, notwithstanding, to be sworn in, and for the clear purpose, illegal and fraudulent in fact, of defeating an election of Senators of the United States.

Fifth. That the said convention by whom, as hereinbefore alleged, the undersigned was elected a Senator of the United States, was assembled in accordance with an express provision of the constitution of the State, and that, in accordance with the long and uniform usage of the State in that particular, the same was adjourned from day to day by the proper presiding officer thereof, and vested with the authority so to adjourn, and that each adjournment was made without objection by a majority of the senate, even considering the three persons aforesaid to have been members of that body being present.

Sixth. That there is not now, in said State, as the undersigned is advised, any law for

the regulation of the election of Senators of the United States, or in any way providing for the same; and that according to the best professional and judicial opinions in the State, the election is to be made by the convention of the legislature assembled under the constitution of the State, to count the votes and decide upon the election of governor and lieutenant-governor, as a power necessarily existing in the legislature, and from the obligations of the State to elect Senators.

Seventh. That before the adoption of the present State constitution there was a law regulating such election, and that although the same was no longer in force, the said convention did, as far as it was possible, conduct the present election according to the provisions thereof.

The undersigned, in conclusion, submits what, indeed, must be obvious to the committee, that as the witnesses and proofs to the matters above stated are only to be had in the State of Indiana, and can only properly be obtained by careful examination, and under the superintendence of himself, that it cannot be in his power to procure it at this or the approaching extra session of the United States Senate, even were he to abandon his duty as a Senator, which he has no right to do, and proceed at once to the place where the testimony is to be had. He further submits, therefore, that the committee will so dispose of the matter now as will enable him and the contestants at a future period to present the entire case fairly and fully before them.

GRAHAM N. FITCH.

FEBRUARY 25, 1857.

True copy. Attest:

THOS. P. MORGAN,
Clerk to the Committee.

SATURDAY, *March* 14, 1857.

[A short debate in reference to correcting a mistake in the Senate Journal took place. The Journal showed that on Monday, March 9, 1857, Mr. Bright's credentials were referred to the Committee on the Judiciary. This was an error, and the Journal was corrected so that it read for that day as given above. The debate is found on pages 396, 397 of the Appendix to the Congressional Globe, 3d sess. 34th Cong., 1856–'57.]

[First session of the Thirty-fifth Congress.]

THURSDAY, *December* 17, 1857.

Mr. Trumbull submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the credentials of the sitting members of this body from the State of Indiana, together with all the papers on file protesting against their rights to seats, or relating to their election as Senators in Congress by the legislature of Indiana, be referred to the Committee on the Judiciary."

THURSDAY, *January* 21, 1858.

Mr. Bayard, from the Committee on the Judiciary, to whom were referred, by a resolution of the Senate of the 17th of December, the credentials of the sitting members of this body from the State of Indiana, with all the papers on file protesting against their rights to seats, or relating to their election as Senators in Congress by the legislature of Indiana, submitted a report (No. 19), accompanied by the following resolution. [Resolution found at end of report.]

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Bayard (chairman), Green, Toombs, Pugh, Benjamin, Collamer, and Trumbull.]

The Committee on the Judiciary, to whom was referred the protest against the election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright as Senators in Congress from the State of Indiana, report:

The committee find that the protests against the election of the Hon. Graham N. Fitch as a Senator in Congress from the State of Indiana were referred to the Committee on the Judiciary on the 10th of February, 1857, and on the 26th of the same month a resolution was reported by the committee authorizing testimony to be taken both by

* This report, taken from Senate Reports, 1st sess. 35th Cong., Report No. 19, is the third report made by the Committee on the Judiciary on the credentials of Mr. Fitch and the first one on the credentials of Mr. Bright.

the protestants and the sitting member. The resolution not being acted upon by the Senate at that session, from the pressure of other business, the protests were again referred to the committee on the 9th of March last, at the special session of the Senate, and the same resolution, with a slight amendment, reported by the committee on the 13th of the same month, which being taken up on the day it was reported, a débate ensued upon an amendment offered by the Hon. Mr. Trumbull, of Illinois, and the Senate having on the previous day resolved to adjourn *sine die* on the 14th of March, at 1 o'clock, the resolution reported by the committee was ordered to lie on the table.

The protests against the election of the Hon. Jesse D. Bright, as well as against the election of the Hon. Graham N. Fitch, having been referred at the present session, and the objections of the protestants and allegations of the sitting members being identical in both cases, the committee have adopted and recommend the passage of the resolution reported to the Senate by the committee at the special session on the 13th day of March last, with such variation as is requisite to make it apply to the cases of both the sitting members, as follows:

"*Resolved*, That in the case of the contested election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright, Senators returned and admitted to their seats from the State of Indiana, the sitting members, and all persons protesting against their election, or any of them, by themselves, or their agents or attorneys, be permitted to take testimony on the allegations of the protestants and the sitting members touching all matters of fact therein contained, before any judge of the district court of the United States, or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis."

MONDAY, *January* 25, 1858.

Mr. Trumbull submitted the views of the minority of the Committee on the Judiciary, to whom were referred the credentials of the Senators from Indiana, and other papers on file relating to their election as Senators in Congress; which were ordered to be printed.

VIEWS OF THE MINORITY.*

The Committee on the Judiciary, to whom were referred the protests against the right of Graham N. Fitch and Jesse D. Bright to seats as Senators from the State of Indiana, report:

The legislature of Indiana called the general assembly, is composed of a senate of fifty members and a house of representatives of one hundred members, and two-thirds of each house is, by the constitution, required to constitute a quorum thereof. Each house is declared to be judge of the election and qualification of its members, and required to keep a journal of its proceedings. No regulation exists by law in Indiana as to the manner in which members of the State senate are to be inducted into office. No law or regulation is there existing providing the time, place, or manner of electing United States Senators.

It appears by the journal of the senate of Indiana that on the opening of the senate at the meeting of the legislature, January 8, 1857, forty-nine of the senators were present, and that all the newly elected members were duly sworn, took their seats, and continued thereafter to act with the other senators till the close of the session. The only absentee senator took his seat January 13, 1857. Protests were filed contesting the seats of three of the newly elected members, which were afterwards examined and considered by the senate, and they were each found and declared to be entitled to seats, respectively, by majorities more or less numerous, all which is entered upon and appears by the journal of said senate.

The State constitution makes it the duty of the speaker of the house of representatives to open and publish the votes for governor and lieutenant-governor in the presence of both houses of the general assembly. No provision exists by the constitution making such meeting or presence of the two houses a convention, or providing any officers there for, or authorizing or empowering the same to transact any business whatever, except by joint vote forthwith to proceed to elect a governor or lieutenant-governor in case of a tie vote.

Both houses being in session, the speaker notified them that he should proceed to open and publish the votes for governor and lieutenant-governor on Monday the 12th day of January, at 2.30 o'clock p. m., in the hall of the house. Shortly before the hour arrived the president of the senate announced that he would proceed immediately to the hall of the house of representatives; and thereupon, together with such senators as chose to go, being a minority of the whole number thereof, he repaired to the hall of the house of

* From Senate Reports, 1st sess. 35th Cong., vol. 1, Report No. 19, part 2.

representatives, and there, in their presence, and in the presence of the members of the house, the votes for governor and lieutenant-governor were duly counted and published by the speaker, and A. P. Willard, the then president of the senate, was declared duly elected governor and A. A. Hammon lieutenant-governor of said State.

At the close of this business, a senator present, without any vote for that purpose, declared the meeting (by him then called a convention) adjourned to the 2d day of February, 1857, at 2 o'clock.

The senate hearing of this proceeding, on the 28th day of January, 1857, as appears by its journal, passed a resolution protesting against the proceedings of said so-called convention, disclaiming all connection therewith or recognizance thereof, and protesting against any election of United States Senators or any other officer thereby. On the 2d of February, 1857, the president of the senate, with a minority of its members, again attended in the hall of the house, and without proceeding to any business, and without any vote, declared the meeting (by him called a convention) adjourned until the 4th day of February, 1857, at which time the president of the senate, with twenty-four of its members, went to the hall of the house of representatives, and there they, together with sixty-two members of the house, proceeded to elect two Senators of the United States, to wit, Graham N. Fitch, and Jesse D. Bright, they each receiving eighty-three votes, and no more, at their respective elections, twenty-three of which votes were by members of the senate.

Against these elections so made protests by twenty-seven members of the senate of Indiana and thirty-five members of the house of representatives of said State have been duly presented, alleging that, in the absence of any law, joint resolution, or regulation of any kind by the two houses composing the legislature of Indiana providing for holding a joint convention, it is not competent for a minority of the members of the senate and a majority, but less than a quorum, of the members of the house of representatives of said State to assemble together and make an election of United States Senators.

Of the facts as herein stated there is no dispute, as we understand.

It is now alleged by the sitting Senators, respectively, as we understand the substance of their allegations, in contradiction of the senate journal, that the three State senators whose seats were contested were not legally elected and qualified: that they were without the expressly required credentials, the certificate of the proper and only returning officer, and that they were, notwithstanding, directed to be sworn in by a presiding officer chosen for the purpose by the members of the senate designated as Republicans, for the clear purpose, illegal and fraudulent in fact, of defeating an election of Senators of the United States.

Under these circumstances we object to the adoption of the resolution for the taking of testimony to sustain these allegations, because the said election of United States Senators, so conducted, is obviously illegal and insufficient, and cannot be cured by any proof of these allegations; and we insist that the Senate should now proceed to a definitive decision of the question.

WEDNESDAY, *February* 3, 1858.

[A short debate took place on the propriety of considering the report at that time. It is found on pages 543–545 of the Congressional Globe, part 1, 1st sess. 35th Cong.]

THURSDAY, *February* 4, 1858.

The Senate proceeded to consider the resolution reported by the Committee on the Judiciary, to whom was referred the protest against the election of the Hon. Jesse D. Bright and the Hon. Graham N. Fitch as Senators in Congress from the State of Indiana; and

An amendment being proposed by Mr. Trumbull,

After debate,

On motion by Mr. Bayard that the resolution lie on the table, it was determined in the affirmative—yeas 29, nays 18.

On motion by Mr. Trumbull, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allen, Bayard, Benjamin, Bigs, Bigler, Broderick, Brown, Cameron, Clay, Davis, Douglas, Evans, Green, Gwin, Houston, Hunter, Iverson, Johnson of Tennessee, Jones, Kennedy, Mason, Polk, Pugh, Sebastian, Slidell, Stuart, Toombs, Wright, and Yulee.

Those who voted in the negative are Messrs. Chandler, Collamer, Crittenden, Dixon, Doolittle, Durkee, Fessenden, Foot, Foster, Hale, Hamlin, Harlan, King, Seward, Simmons, Trumbull, Wade, and Wilson.

So it was

Ordered, That the resolution lie on the table.

[A debate on the adoption of the resolution is found on pages 567–570 of the Congressional Globe, part 1, 1st sess. 35th Cong.]

MONDAY, *February* 15, 1858.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary, to whom were referred the credentials of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright, and the protest against their election as Senators in Congress from the State of Indiana; and

The amendment proposed by Mr. Trumbull being under consideration,

After debate,

On motion by Mr. Hunter,

Ordered, That the further consideration of the resolution be postponed until to-morrow at 1 o'clock.

[The subject is debated on pages 698–710 of the Congressional Globe, part 1, 1st sess. 35th Cong.]

TUESDAY, *February* 16, 1858.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary in the case of the contested election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright; and

On the question to agree to the following amendment, proposed by Mr. Trumbull: Strike out all after the word "resolved" and insert:

"That the Senate will now proceed to a final determination of the right to seats in this body of Graham N. Fitch and Jesse D. Bright, claiming to have been elected Senators by the legislature of Indiana,"

It was determined in the negative—yeas 16, nays 28.

On motion by Mr. Trumbull, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Chandler, Clark, Collamer, Dixon, Doolittle, Durkee, Fessenden, Foster, Hamlin, Harlan, King, Seward, Simmons, Sumner, Trumbull, and Wade.

Those who voted in the negative are Messrs. Allen, Biggs, Bigler, Broderick, Brown, Cameron, Clay, Evans, Green, Gwin, Hammond, Hunter, Iverson, Johnson of Arkansas, Johnson of Tennessee, Jones, Mallory, Mason, Polk, Pugh, Sebastian, Slidell, Stuart, Thompson of Kentucky, Thomson of New Jersey, Toombs, Wright, and Yulee.

On motion by Mr. Seward to amend the resolution by adding thereto the following:

"*Provided*, That the proofs to be taken shall be limited to the swearing in of the members of the legislature of Indiana, the organization of the said legislature, and the proceedings thereof connected with the election of the sitting members for said State in the Senate of the United States, and shall be returned to the Senate of the United States within sixty days from the passage of this resolution,"

A division was called for by Mr. Hale; and, the question being taken on the first clause, relating to the proofs to be taken, it was determined in the negative—yeas 19, nays 25.

On motion by Mr. Mallory, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Broderick, Cameron, Chandler, Clark, Collamer, Dixon, Doolittle, Durkee, Fessenden, Foster, Hamlin, Harlan, King, Seward, Simmons, Stuart, Sumner, Trumbull, and Wade.

Those who voted in the negative are Messrs. Allen, Biggs, Bigler, Brown, Clay, Evans, Green, Gwin, Hammond, Houston, Hunter, Iverson, Johnson of Arkansas, Johnson of Tennessee, Jones, Kennedy, Mallory, Mason, Polk, Pugh, Sebastian, Slidell, Thompson of Kentucky, Toombs, and Yulee.

On the question to agree to the second clause, as follows: "And shall be returned to the Senate of the United States within sixty days from the passage of this resolution,"

A motion was made by Mr. Pugh to amend the same by striking out the word "sixty" and inserting "ninety;" and it was determined in the affirmative—yeas 27, nays 18.

On motion by Mr. Seward, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allen, Biggs, Bigler, Broderick, Brown, Clay, Evans, Green, Gwin, Hammond, Houston, Hunter, Iverson, Johnson of Arkansas, Johnson of Tennessee, Jones, Kennedy, Mallory, Mason, Polk, Pugh, Sebastian, Slidell, Thomson of New Jersey, Toombs, Wright, and Yulee.

Those who voted in the negative are Messrs. Chandler, Clark, Collamer, Dixon, Doolittle, Durkee, Fessenden, Foster, Hamlin, Harlan, King, Seward, Simmons, Stuart, Sumner, Thompson of Kentucky, Trumbull, and Wade.

On motion by Mr. Toombs to amend the amendment by adding thereto—

"*And provided*, That no testimony shall be taken under this resolution in relation to the qualification, election, or return of any member of the Indiana legislature,"

It was determined in the affirmative.

The amendment as amended was then agreed to.

On motion by Mr. Wilson further to amend the resolution by striking out the words "any judge of the district court of the United States, or any judge of the supreme or circuit courts of the State of Indiana" and inserting:

"The Hon. Oliver H. Smith, the Hon. John Pettit, and the Hon. John D. Defrees, who are hereby appointed commissioners for that purpose,"

It was determined in the negative.

On motion by Mr. Fessenden to amend the resolution by striking out the words "the supreme or circuit courts" and inserting "any court of record," it was determined in the negative.

The resolution as amended was then agreed to, as follows:

"*Resolved*, That in the case of the contested election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright, Senators returned and admitted to their seats from the State of Indiana, the sitting members, and all persons protesting against their election, or any of them, by themselves or their agents or attorneys, be permitted to take testimony on the allegations of the protestants and the sitting members touching all matters of fact therein contained, before any judge of the district court of the United States, or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis: *Provided*, That the proofs to be taken shall be returned to the Senate of the United States within ninety days from the passage of this resolution: *And provided*, That no testimony shall be taken under this resolution in relation to the qualification, election, or return of any member of the Indiana legislature."

[The debate is found on pages 720–724 of the Congressional Globe, part 1, 1st sess. 35th Cong.]

MONDAY, *April* 19, 1858.

Mr. Trumbull submitted the following motion; which was considered by unanimous consent, and agreed to:

Ordered, That the Secretary of the Senate furnish, on application by any individual desiring to possess the same, an authenticated copy of the resolution agreed to on the 16th of February, 1858, authorizing testimony to be taken in reference to the election of the Hon. Jesse D. Bright and the Hon. Graham N. Fitch as Senators from the State of Indiana.

[Brief remarks on the resolution are found on pages 1658, 1659 of the Congressional Globe, part 2, 1st sess. 35th Cong.]

SATURDAY, *May* 15, 1858.

The Vice-President laid before the Senate testimony in the case of the contested election of the Hon. Jesse D. Bright and the Hon. Graham N. Fitch as Senators of the United States from the State of Indiana, which was referred to the Committee on the Judiciary.

TUESDAY, *May* 18, 1858.

Mr. Bright presented affidavits of C. K. Drew, R. D. Slater, and W. J. Cullen, evidence in the case of the contested election of the Hon. Jesse D. Bright and the Hon. Graham N. Fitch as Senators from the State of Indiana, which were referred to the Committee on the Judiciary.

MONDAY, *May* 24, 1858.

Mr. Pugh, from the Committee on the Judiciary, to whom were referred the credentials of Graham N. Fitch and Jesse D. Bright, Senators from the State of Indiana, together with the documents and testimony relative to that subject, submitted a report (No. 275), accompanied by the following resolution. [For resolution see report.]

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Bayard (chairman), Sebastian, Pugh, Benjamin, Green, Collamer, and Trumbull.]

The Committee on the Judiciary, to whom were referred the credentials of Graham N. Fitch and Jesse D. Bright, Senators from the State of Indiana, together with the documents and testimony relative to that subject, have had the same under consideration, and report, by resolution, as follows:

Resolved, That Graham N. Fitch and Jesse D. Bright, Senators returned and admitted

* The testimony accompanying this report may be found in Senate Reports, 1st sess. 35th Cong., vol. 2, Report No. 275. This is the fourth report made by the Committee on the Judiciary on the credentials of Mr. Fitch, and the second one to include the credentials of Mr. Bright.

from the State of Indiana, are entitled to the seats which they now hold in the Senate as such Senators aforesaid, the former until the 4th of March, 1861, and the latter until the 4th of March, 1863, according to the tenor of their respective credentials.

[Some remarks by members of the committee, asking for an opportunity to examine the report before it is printed, are found on pages 2353, 2354 of the Congressional Globe, part 3, 1st sess. 35th Cong.]

MONDAY, *June* 7, 1858.

Mr. Pugh presented an affidavit of John W. Blake, relative to the election of the Hon. Jesse D. Bright and the Hon. Graham N. Fitch as Senators in Congress from the State of Indiana.

Ordered, That it lie on the table.

THURSDAY, *June* 10, 1858.

On motion by Mr. Bright, the Senate proceeded to consider the resolution reported by the Committee on the Judiciary, declaring the Hon. Jesse D. Bright and the Hon. Graham N. Fitch, Senators from the State of Indiana, entitled to their seats in the Senate; and,

On motion by Mr. Bright,

Ordered, That the further consideration thereof be postponed to, and made the special order of the day for, to-morrow at 12 o'clock.

[A brief debate on the postponement of the consideration of the resolution is found on page 2876 of the Congressional Globe, part 3, 1st sess. 35th Cong.]

FRIDAY, *June* 11, 1858.

The Senate resumed the consideration of the resolution reported from the Committee on the Judiciary, declaring the Hon. Jesse D. Bright and the Hon. Graham N. Fitch, Senators in Congress from the State of Indiana, entitled to their seats in the Senate; and,

An amendment being proposed by Mr. Hamlin,

On motion by Mr. Trumbull to amend the proposed amendment,

After debate,

Ordered, That the further consideration thereof be postponed to, and made the special order of the day for, to-morrow at 12 o'clock.

[An extended debate on the adoption of the resolution is found on pages 2923–2949 of the Congressional Globe, part 3, 1st sess. 35th Cong.]

SATURDAY, *June* 12, 1858.

The Senate resumed the consideration of the resolution reported from the Committee on the Judiciary, declaring the Hon. Jesse D. Bright and the Hon. Graham N. Fitch, Senators in Congress from the State of Indiana, entitled to their seats in the Senate.

A motion was made by Mr. Hamlin to amend the resolution by striking out all after the word "resolved," and inserting:

"That the case of Jesse D. Bright and Graham N. Fitch be recommitted to the Committee on the Judiciary, with instructions to report specially the grounds on which the resolution is based declaring said Bright and Fitch elected."

On motion by Mr. Trumbull to amend the proposed amendment by striking out all after the word "that" and inserting "in the opinion of the Senate, no election of a member of this body made by the legislature of a State consisting of two branches is valid, when made in a meeting of individual members of both, unless such meeting for that purpose was prescribed by law, or had been previously agreed to by each house acting separately in its organized capacity, or is participated in by a majority of the members of each house, or is subsequently ratified in some form by each house in its organized capacity," it was determined in the negative—yeas 17, nays 26.

On motion by Mr. Trumbull, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Broderick, Chandler, Clark, Dixon, Doolittle, Durkee, Fessenden, Foot, Foster, Hamlin, Harlan, King, Seward, Simmons, Trumbull, Wade, and Wilson.

Those who voted in the negative are Messrs. Allen, Benjamin, Bigler, Brown, Clay, Clingman, Davis, Fitzpatrick, Green, Gwin, Hammond, Hayne, Iverson, Jones, Mallory, Mason, Polk, Pugh, Reid, Rice, Sebastian, Slidell, Thomson of New Jersey, Toombs, Wright, and Yulee.

On the question to agree to the amendment proposed by Mr. Hamlin, it was determined in the negative—yeas 16, nays 34.

On motion by Mr. Fessenden, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Chandler, Clark, Dixon, Doolittle, Durkee, Fessenden, Foot, Foster, Hamlin, Harlan, King, Seward, Simmons, Trumbull, Wade, and Wilson.

Those who voted in the negative are Messrs. Allen, Benjamin, Bigler, Broderick, Brown, Clay, Clingman, Collamer, Fitzpatrick, Green, Gwin, Hammond, Hayne, Houston, Hunter, Iverson, Johnson of Arkansas, Johnson of Tennessee, Jones, Kennedy, Mallory, Mason, Pearce, Polk, Pugh, Reid, Rice, Sebastian, Slidell, Thompson of Kentucky, Thomson of New Jersey, Toombs, Wright, and Yulee.

So the amendment was not agreed to.

On motion by Mr. Trumbull to amend the resolution by inserting after the word "are" and before the word "entitled" the word "not," it was determined in the negative—yeas 23, nays 30.

On motion by Mr. Seward, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Broderick, Chandler, Clark, Collamer, Dixon, Doolittle, Douglas, Durkee, Fessenden, Foot, Foster, Hale, Hamlin, Harlan, Houston, King, Mason, Pearce, Seward, Simmons, Trumbull, Wade, and Wilson.

Those who voted in the negative are Messrs. Allen, Benjamin, Bigler, Brown, Clay, Clingman, Davis, Fitzpatrick, Green, Gwin, Hammond, Hayne, Hunter, Iverson, Johnson of Arkansas, Johnson of Tennessee, Jones, Kennedy, Mallory, Polk, Pugh, Reid, Rice, Sebastian, Sildell, Thompson of Kentucky, Thomson of New Jersey, Toombs, Wright, and Yulee.

No further amendment being proposed, the resolution reported by the Committee on the Judiciary was then agreed to, as follows:

"*Resolved*, That Graham N. Fitch and Jesse D. Bright, Senators returned and admitted from the State of Indiana, are entitled to the seats which they now hold in the Senate as such Senators aforesaid, the former until the 4th of March, 1861, and the latter until the 4th of March, 1863, according to the tenor of their respective credentials."

[No debate took place this day.]

[Second session of the Thirty-fifth Congress.]

Credentials of Henry S. Lane and William Monroe McCarty.

MONDAY, *January* 24, 1859.

The Vice-President presented a memorial of the State of Indiana, by its senators and representatives in general convention assembled, representing that it is the wish and desire of the State that the Hon. Henry S. Lane and the Hon. William Monroe McCarty be admitted to seats in the Senate of the United States as the only legally elected and constitutionally chosen Senators of the State of Indiana; which was read.

On motion by Mr. Trumbull,

Ordered, That it be referred to the Committee on the Judiciary and be printed.

[The memorial is printed on pages 534, 535 of the Congressional Globe, part 1, 2d sess. 35th Cong.]

* * * * * * *

Mr. Seward submitted the following resolution for consideration:

"*Resolved*, That the Hon. Henry S. Lane and the Hon. William M. McCarty, who claim to have been elected Senators from the State of Indiana, be entitled to the privileges of admission on the floor of the Senate until their claims shall have been decided."

WEDNESDAY, *January* 26, 1859.

On motion by Mr. Seward, the Senate proceeded to consider the resolution, submitted by him the 24th instant, to admit the Hon. Henry S. Lane and the Hon. W. M. McCarty, claiming to have been elected Senators by the legislature of Indiana, on the floor of the Senate; and

After debate,

On motion by Mr. Iverson that the resolution lie on the table, it was determined in the affirmative—yeas 31, nays 22.

On motion by Mr. Seward, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allen, Bates, Bayard, Benjamin, Bigler, Brown, Chesnut, Clingman, Davis, Fitzpatrick, Green, Gwin, Hammond, Houston, Hunter, Iverson, Johnson of Tennessee, Kennedy, Mallory, Mason, Polk, Pugh, Reid, Rice, Sebastian, Shields, Slidell, Stuart, Thomson of New Jersey, Toombs, and Ward.

Those who voted in the negative are Messrs. Bell, Broderick, Cameron, Chandler, Clark, Collamer, Crittenden, Dixon, Doolittle, Durkee, Fessenden, Foot, Foster, Hale, Hamlin, Harlan, King, Seward, Simmons, Trumbull Wade, and Wilson.

So it was

Ordered, That the resolution lie on the table.

[A debate on the adoption of the resolution is found on pages 599–602 of the Con sional Globe, part 1, 2d sess. 35th Cong.]

FRIDAY, *January* 28, 18

Mr. Douglas presented a certified copy of that portion of the journal of the sena the State of Indiana of the 22d of December, 1858, also a certified copy of that po of the journal of the house of representatives of the State of Indiana of the 22d of cember, 1858, relating to the election of United States Senators; which were refer the Committee on the Judiciary.

THURSDAY, *February* 3, 18

Mr. Bayard, from the Committee on the Judiciary, to whom was referred a mem of the State of Indiana, by her senators and representatives in general convention as bled, requesting that the Hon. Henry S. Lane and the Hon. William Monroe McC be admitted to seats in the Senate of the United States as the only legally elected constitutionally chosen Senators of that State; also certified copies of the proceedin the senate and house of representatives of the State of Indiana of the 22d of Decem 1858, relative to the election of United States Senators, submitted a report, asking the committee be discharged from the further consideration of the memorial of the l lature of Indiana.

On motion by Mr. Bayard,

Ordered, That the report lie on the table and be printed.

Mr. Collamer submitted the views of the minority of the Committee on the Judi on the subject; which were ordered to be printed.

* * * * * * *

Mr. Seward submitted the following resolution for consideration:

"*Resolved*, That Henry S. Lane and William M. McCarty have leave to occupy on the floor of the Senate pending the discussion of the report of the Committee on Judiciary on the memorial of the legislature of Indiana declaring them her duly ele Senators, and that they have leave to speak to the merits of their right to seats and report of the committee."

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Bayard (chairman), Pugh, Benjamin, Gr Clingman, Collamer, and Trumbull.]

Mr. Bayard submitted the following report:

The Committee on the Judiciary, to whom was referred the memorial of the St Indiana, by her representatives and senators in general convention assembled, senting that it is her wish and desire that the Hon. Henry S. Lane and the Hon. iam Monroe McCarty be admitted to seats in the Senate of the United States only legally elected and constitutionally chosen Senators of that State, submit t lowing report:

That the Hon. Graham N. Fitch, on the 9th day of February, 1857, was admi the Senate on the customary *prima facie* evidence of his election as a Senator fr State of Indiana, to serve as such until the 4th day of March, A. D. 1861; was q and took his seat as a Senator. On the same day resolutions of the senate of adverse to the legality of his election and a protest of certain members of the representatives of the same State against the validity of the election were pres the Senate; and the credentials of Mr. Fitch, the resolutions of the senate of and the protest of the members of the house of representatives against the v the election were referred to the Committee on the Judiciary.

The committee on the 26th of February reported a resolution authorizing t to be taken both by the sitting members and the protestants in relation to al of fact contained in their respective allegations. This report was ordered t the table on the 2d of March, 1857, and no further action was had upon t during that session. At the called session of the Senate the papers on file r the election of Mr. Fitch, were on the 9th of March 1857, on motion of Mr. referred to the Committee on the Judiciary, and on the 14th of March the reported a resolution authorizing testimony to be taken—slightly variant fro lution reported at the preceding session. The resolution was on the same da lie on the table. The credentials of the Hon. Jesse D. Bright, elected a S the State of Indiana, to serve as such until the 4th day of March, 1863, we to the Senate and read on the 2d day of March, 1857; and at the called se Senate, on the 4th day of March, A. D. 1857, Mr. Bright was qualified a

* Annexed to the report, which is taken from Senate Reports, 2d sess. 35th Cong., are the reports made January 21 and 25, 1858, which are printed above.

seat. At the first session of the present Congress, on the 17th of December, 1858, on motion of Mr. Trumbull, the credentials of the sitting members from Indiana, together with all papers on file protesting against their right to seats, or relating to their election as Senators in Congress by the legislature of Indiana, were referred by the Senate to the Committee on the Judiciary. On the 21st of January, 1858, the committee made a report, concluding with a resolution similar to the resolution which had previously been reported in relation to the case of Mr. Fitch, authorizing testimony to be taken; and on the 25th of the same month Mr. Trumbull submitted the views of the minority of the committee.

Both the report of the committee and the views of the minority were printed and are appended as part of this report, with a view to the illustration of the questions presented to the Senate, upon which its decision was subsequently made.

On the 16th of February, 1858, the consideration of the resolution reported by the committee was resumed, and, after the rejection of some proposed amendments and the adoption of others, the following resolution was passed by the Senate:

"*Resolved*, That in the case of the contested election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright, Senators returned and admitted to their seats from the State of Indiana, the sitting members and all persons protesting against their election, or any of them, by themselves or their agents or attorneys, be permitted to take testimony on the allegations of the protestants and the sitting members touching all matters of fact therein contained before any judge of the district court of the United States or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis: *Provided*, That the proofs to be taken shall be returned to the Senate of the United States within ninety days from the passage of this resolution: *And provided*, That no testimony shall be taken under this resolution in relation to the qualification, election, or return of any member of the Indiana legislature."

Testimony was subsequently taken by the protestants, which was, together with certain affidavits presented on behalf of the sitting members and documentary evidence referred to the Committee on the Judiciary, and on the 24th day of May, 1858, Mr. Pugh from that committee reported the following resolution:

"*Resolved*, That Graham N. Fitch and Jesse D. Bright, Senators returned and admitted from the State of Indiana, are entitled to the seats which they now hold in the Senate as such Senators aforesaid, the former until the 4th of March, 1861, and the latter until the 4th of March, 1863, according to the tenor of their respective credentials."

This resolution and the accompanying documents were on the same day ordered to be printed.

The resolution was under consideration in the Senate, and fully debated at several subsequent times, and was finally, after the rejection of several proposed amendments, passed by the Senate without amendment or alteration. In the opinion of the committee, this resolution (no motion having been made to reconsider it) finally disposed of all questions presented to the Senate involving the respective rights of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright to their seats in the Senate, as Senators from the State of Indiana for the terms stated in the resolution. It appears by the memorial that the legislature of Indiana, at its recent session in December last, assumed the power of revising the final decision thus made by the Senate of the United States under its unquestioned and undoubted constitutional authority to "be the judge of the qualifications of its own members." Under this assumption, it also appears by the journals of the senate and house of representatives of the State of Indiana, the legislature of Indiana, treating the seats of the Senators from that State as vacant, proceeded, subsequently, by a concurrent vote of the senate and house of representatives of the State, to elect the Hon. Henry S. Lane as a Senator of the United States for the State of Indiana, to serve as such until the 4th of March, 1863, and the Hon. William Monroe McCarty as a Senator for the same State, to serve as such until the 4th of March, A. D. 1861. Under this action of the legislature of Indiana those gentlemen now claim their seats in the Senate of the United States.

It may be conceded that the election would have been valid, and the claimants entitled to their seats, had the legislature of Indiana possessed the authority to revise the decision of the Senate of the United States that Messrs. Fitch and Bright had been duly elected Senators from Indiana, the former until the 4th of March, 1861, and the latter until the 4th of March, 1863.

In the opinion of the committee, however, no such authority existed in the legislature of Indiana. There was no vacancy in the representation of that State in the Senate; and the decision of the Senate, made on the 12th of June, 1858, established finally and (in the absence of a motion to reconsider) irreversibly the right of the Hon. Graham N. Fitch as a Senator of the State of Indiana until the 4th of March, 1861, and the right of the Hon. Jesse D. Bright as a Senator from the same State until the 4th of March, A. D. 1863.

The decision was made by an authority having exclusive jurisdiction of the subject; was judicial in its nature; and, being made on a contest in which all the facts and questions of law involving the validity of the election of Messrs. Fitch and Bright, and their respective rights to their seats, were as fully known and presented to the Senate as they are now in the memorial of the legislature of Indiana, the judgment of the Senate then rendered is final, and precludes further inquiry into the subject to which it relates.

There being, by the decision of the Senate, no vacancy from the State of Indiana in the Senate of the United States, the election held by the legislature of that State at its recent session is, in the opinion of the committee, a nullity, and merely void, and confers no rights upon the persons it assumed to elect as Senators of the United States.

The committee ask to be discharged from the further consideration of the memorial of the legislature of Indiana.

VIEWS OF THE MINORITY.*

Mr. Collamer submitted the following views of the minority:

The power of the Senate to judge of the election and qualification of its own members is unlimited and abiding. It is not exhausted in any particular case by once adjudicating the same, as the power of re-examination and the correction of error or mistake incident to all judicial tribunals and proceedings remains with the Senate in this respect, as well to do justice to itself as to the States represented or to the persons claiming or holding seats. Such an abiding power must exist, to purge the body from intruders, otherwise any one might retain his seat who had once wrongly procured a decision of the Senate in his favor by fraud or falsehood, or even by papers forged or fabricated.

In what cases and at whose application a rehearing will at all times be granted is not now necessary to inquire; but when new parties, with apparently legal claim, apply, and especially when a sovereign State, by its legislature, makes respectful application to be represented by persons in the Senate legally elected, and insists that the sitting members from that State were never legally chosen, we consider that the subject should be fully re-examined, and that neither the State, the legislature, or the persons now claiming seats can legally or justly be estopped, or even prejudiced, by any former proceedings of the Senate to which they were not parties.

At the first session of the legislature of Indiana after the present sitting members were declared by the Senate as entitled to their seats, and at the earliest time it could take action, it declared their pretended election as inoperative and void, and that the State was infact unrepresented; and they proceeded to elect H. S. Lane and William M. McCarty as Senators of the United States for said State, according to the Constitution of the United States; and they send here their memorial, alleging that the present sitting members were never legally elected; and they show facts, in addition to what was heretofore presented to the Senate, tending, as they consider, to sustain this allegation. The said Lane and McCarty present their certificates and claim their seats. We consider the matters stated in said memorial as true. The said Lane and McCarty have presented their brief sustaining their claim to seats, which is in the words following:

Brief of W. M. McCarty and Henry S. Lane, submitted to the Judiciary Committee of the Senate.

The State is entitled to the office. The legislature is her supreme instrument and donee of the power to elect Senators. It is the creature of the constitution, which is the chart of its power, vested only in two co-ordinate branches; a quorum of two-thirds of the members is requisite to give either a legal entity; each is equivalent in power, with an absolute veto on the power of the other.

The legislature is a corporation aggregate, with only such power as its creator has seen fit to endow it with, to be exercised in conformity to the laws of its birth.

To the joint wisdom and counsel of these colleges is the legislative *power* intrusted. It is not parceled out to its component elements in integrals, neither is it vested in an amalgamated body of the two. The one is erected as a barrier to the other. The ordeal of both must be passed. This guaranty against abuse cannot be broken down without destroying one of the safeguards of our Government. The sovereign voice is an unit. The power that utters it is an entirety—an invisible, intangible, artificial person. The power is in the organism called "the general assembly," and not in the individual members. It is not the rights or powers of the members, but the delegated trust powers of the State that are wielded in senatorial elections or other exercises of legislative powers. Without a quorum of either house it did not exist—without either, the legislature did not exist, and without a legislature no election would be had.

Now, the facts are that a quorum of neither house was present at the pretended elec-

* *Taken from Senate* Reports, 2d sess. 35th Cong., Report No. 368, part 2.

tion of Messrs. Bright and Fitch, nor even a majority of the senate, nor did either house prescribe the time, place, or manner of electing.

It is of the essence of legislative power that its exercise shall be free from all restraint; each body free to deliberate and act in its duties; each entitled to its full powers. The facts are that *the senate, upon eight occasions, refused to go into joint convention with the house, and at no time consented.* She could not be *compelled* to merge her individuality, or surrender her veto power, or adopt the joint-vote mode of electing Senators; or, in other words, dilute or annihilate her power, upon the mandate of the house, as that would degrade her from an equal to an inferior. On the contrary she had the right to determine the time, place, and manner, and did do it by resolution, to elect by *separate* vote, at a proper time, in which the house never concurred. Where diverse duties are imposed, she must determine which are most imperative and shall have priority.

The constitution of Indiana only provides for a joint convention upon the contingency of a tie vote for governor and lieutenant-governor. That contingency did not exist; therefore the convention did not. To say that a duty to form a joint convention creates it is as absurd as to say that the subpœna of a witness works his presence, or the commands of the decalogue their observance.

Failing to get the senate into a joint convention, a false record of that pretended fact was made, to be used as evidence, and which has been used as veritable and true, and the absolute verity and the unimpeachable quality of a record claimed for the fabrication.

The resolves of the senate are those of the whole body. The mutinous senators who usurped the name and power of the senate in said pretended convention were subject to arrest by order of that body for absence, and the attempt to nullify the will of the majority by attempting a business at a time, place, and in a manner vetoed by that body by a resolve, then unvacated and unrescinded. Said convention, if it existed, expired with the duty that called it into life. The president of the senate, when inaugurated governor, his office as president of the senate expired, and with it that of his deputy president. The president not only usurped the power to appoint a clerk—an office not known to the law and void—who only authenticated this pretended election by interpolating it into the journal of the house. This president, whose power expired with that of his creator, arrogated that of adjourning it to a fixed day; in other words, commanding it to obey his arbitrary rescript; and, at a subsequent one, the more imperious mandate commanded them to elect Senators, no agreement whatever having been had by the house therefor as to time, place, and manner.

We aver that not only did no usage exist in Indiana, but that in no solitary instance was an election had without the consent of both houses, fixing time, place, &c., by law or resolution. While said pretended convention was in existence, but adjourned to a fixed day, numerous attempts were made in both houses to create one by the members who voted for Messrs. Bright and Fitch; thus offering evidence that they did not consider that one *had* been formed and was in existence. No forced convention could be had. Mutual consent was necessary, and it was never had by a vote, which is the only mode of altering the will of a legislative body.

The history of joint conventions in Indiana will also show that no other business was ever transacted than that for which it was specially convened. And we insist that the validity of the acts of a joint convention is due to the separate action of the two houses as the general assembly. It is also necessary to the validity of all elections by corporate bodies that notice be given of the time, &c., and the journals of neither house show any such notice or any conventional agreement for the same.

Upon the facts and law above no legal election could have been had.

To sustain the title of Messrs. Bright and Fitch, the constitution of Indiana, depositing her legislative power in two co-ordinate houses, must be broken down—that which requires two-thirds of the members to exercise any of her attributes of sovereignty, and that one house cannot coerce the other. Not only is this election in defiance of these injunctions, but in the face of a positive dissent by one branch, armed by the people with an absolute veto. But a presiding officer, who is no part of the legislature, usurped the powers and prerogatives of the legislature; all the forms and guarantees with which the people hedged in their legislative servant were disregarded, and it is claimed that the act is as valid as if they had been observed.

To sustain Messrs. Bright and Fitch the constitution of Indiana is made a dead letter. Will the Senate, the peculiar guardians of State rights, reared up for that especial purpose, exclude Indiana from her weight and voice in it by instruments empowered by her? Will she be allowed to interpret her own constitution and acts, or will the Senate, under any pretense, blot her out of the confederacy, and realize all those fears portrayed by some of the framers of the Constitution by an absorbtion of and encroachment upon State rights?

The legislative power enshrines and protects all rights subject to its jurisdiction. Prior to the confederation the several States owed this duty to their citizens. They did not

surrender it, but intrusted it to the Federal for their better protection with the right guaranteed them of a voice in the Senate, as a means of enforcing this duty through the Federal instrument.

We deny that under a constitutional grant of power, with prescribed modes of its exhibition, that you can discriminate between elections and laws. The selection of a general, upon whose skill the fate of an army or the country may depend, or of a judge upon whose legal attainments and integrity the lives, liberties, and property of the citizen may depend, is of less moment than some petty law.

The same power is as requisite to the creation of the one as the other.

But it may be said that this question is *res adjudicata*.

We deny that our rights or title are barred by a decision had *before they were created*.

We deny that the judicial power of the Senate is capable of self-exhaustion. We deny that the political right of the State is capable of annihilation without annihilating the Constitution which creates the right.

We insist that the right to judge of the election and qualification of members must continue while the term continues.

The qualifications are continuing conditions of title.

We deny that courts are ever estopped by their own action.

We deny that sovereigns are estopped.

We deny that Indiana was, prior to this time, a party to the proceedings of the Senate, or had opportunity to allege or elicit the true facts.

We deny the power of the Senate, under the power to judge, to *create* Senators for Indiana.

We claim for her a superior knowledge of her own acts and grants.

We insist that the simple admission of a Senator to his seat upon credentials is a decision, and that it was never pretended this precluded his ouster if his title were not good.

If the Senate have not power to exclude foreign elements at all times, it is not equal to the duties intrusted to its guardianship.

And we will not believe that the Senate is the only tribunal on earth whose wrongs, once done, are eternal and irrevocable.

W. M. McCARTY.
H. S. LANE.

In the case of the State of Mississippi, in the House of Representatives in the Twenty-fifth Congress, the power to re-examine a decision made on an election of members was fully considered and decided. Gohlston and Claiborne were, at a special election held on the proclamation of the governor, chosen representatives from that State to a special session of Congress, called by the President. At that session exception was taken to them, but after some objection they were admitted to their seats. Their case and papers were referred to the Committee on Elections, who made report, and thereupon, on full and elaborate discussion, it was resolved that they were duly elected members of the Twenty-fifth Congress, and entitled to their seats. This was in September. In November following an election was holden in said State, and Prentiss and Ward were elected members of the Twenty-fifth Congress, who, in December following, presented their credentials and claimed their seats. It was then insisted in that case, as it now is in this, that the decision so before made was conclusive of the right of Claiborne and Gohlston to their seats as members of the Twenty-fifth Congress, and the whole matter was "*res adjudicata.*" But on full examination and after full discussion, the former resolution declaring said Caliborne and Gohlston as duly elected members of the Twenty-fifth Congress was *rescinded*.

We are therefore of opinion that the memorial of the legislature of Indiana should be duly entertained and considered, and the said Lane and McCarty fully heard; and that if on full examination and hearing the Senate find that the present sitting members were not duly elected, the resolution declaring them elected should be reconsidered. And if the Senate find that the said Lane and McCarty were legally elected they should be admitted to their seats.

J. COLLAMER.
L. TRUMBULL.

THURSDAY, *February* 10, 1859.

On motion by Mr. Bayard, the Senate proceeded to consider the report of the Committee on the Judiciary on the memorial of the legislature of Indiana asking that the Hon. Henry S. Lane and the Hon. William M. McCarty be admitted to seats in the Senate of the United States, as Senators duly elected by that legislature; and,

On motion by Mr. Bayard,

Ordered, That the further consideration thereof be postponed until to-morrow.

On motion by Mr. Seward, the Senate proceeded to consider the resolution, submitted

by him the 3d instant, to admit the Hon. Henry S. Lane and the Hon. William M. McCarty to seats on the floor of the Senate during the discussion of the report of the Committee on the Judiciary in relation to their election, and to permit them to speak on the merits of their rights to seats in the Senate; and,

On motion by Mr. Seward,

Ordered, That the further consideration thereof be postponed until to-morrow.

[A short debate is found on pages 922, 923 of the Congressional Globe, part 1, 2d sess. 35th Cong.]

* * * * * * * *

On motion by Mr. Seward to postpone all prior orders to consider the report of the Committee on the Judiciary on the memorial of the State of Indiana in relation to the representation of that State in the Senate of the United States, it was determined in the negative—yeas 19, nays 20.

On motion by Mr. Seward, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bell, Broderick, Cameron, Chandler, Clark, Collamer, Crittenden, Doolittle, Durkee, Foot, Harlan, Johnson of Tennessee, King, Seward, Simmons, Thompson of Kentucky, Trumbull, Wade, and Wilson.

Those who voted in the negative are Messrs. Allen, Bates, Benjamin, Bigler, Brown, Clingman, Davis, Fitzpatrick, Gwin, Houston, Hunter, Jones, Mallory, Mason; Pugh, Reid, Sebastian, Shields, Slidell, and Ward.

So the motion was not agreed to.

[A short debate on the order of business is found on pages 933, 934 of the Congressional Globe, part 1, 2d sess. 35th Cong.]

FRIDAY, *February* 11, 1859.

On motion by Mr. Seward, the Senate resumed the consideration of the report of the Committee on the Judiciary on the memorial of the State of Indiana, relating to the Senators of that State, viz, that the committee be discharged from the further consideration of the memorial.

An amendment being submitted by Mr. Seward, and an amendment to that amendment being proposed by Mr. Pugh,

While Mr. Seward was engaged in debate a question was raised, at 1 o'clock, by Mr. Iverson, whether the special order of the day (S. 497), being the unfinished business of yesterday, was not entitled to precedence.

The Vice-President decided that Mr. Seward was still entitled to the floor, on a privileged question.

On motion by Mr. Pugh that the report of the committee, with the pending amendments, lie on the table, it was determined in the affirmative—yeas 31, nays 20.

On motion by Mr. Seward, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allen, Bayard, Benjamin, Bigler, Brown, Chesnut, Clay, Clingman, Davis, Fitzpatrick, Gwin, Hammond, Houston, Hunter, Iverson, Johnson of Arkansas, Johnson of Tennessee, Jones, Kennedy, Mallory, Mason, Polk, Pugh, Reid, Rice, Sebastian, Slidell, Stuart, Thompson of Kentucky, Toombs, and Ward.

Those who voted in the negative are Messrs. Bates, Bell, Broderick, Cameron, Chandler, Clark, Collamer, Doolittle, Douglas, Durkee, Fessenden, Foot, Hale, Harlan, King, Seward, Simmons, Trumbull, Wade, and Wilson.

[A short debate is found on pages 957–959 of the Congressional Globe, part 1, 2d sess. 35th Cong.]

MONDAY, *February* 14, 1859.

On motion by Mr. Collamer, the Senate proceeded to consider the report of the Committee on the Judiciary on the memorial of the State of Indiana in relation to the Senators from Indiana, with the reported resolution, that the Committee on the Judiciary be discharged from the further consideration of the memorial of the legislature of Indiana.

An amendment having been proposed by Mr. Seward, to amend the resolution to discharge the Committee on the Judiciary by striking out all after "resolved" and inserting,

"That Henry S. Lane and William M. McCarty have leave to occupy seats on the floor of the Senate pending the discussion of the report of the Committee on the Judiciary on the memorial of the legislature of Indiana declaring them her duly elected Senators, and that they have leave to speak to the merits of their rights to seats and on the report of the committee,"

On motion by Mr. Pugh to amend the amendment proposed by Mr. Seward, by striking out all after "that" and inserting "the resolution of the Senate, adopted June 12,

1858, affirming the right of Graham N. Fitch and Jesse D. Bright as Senators elected from the State of Indiana, the former until the 4th day of March, 1861, and the latter until the 4th day of March, 1863, was a final decision of all the premises then in controversy, and conclusive as well upon the legislature of Indiana, and all persons claiming under its authority, as upon the Senators named in the resolution."

On motion by Mr. Harlan "That all the papers in this case be recommitted to the Committee on the Judiciary with instructions to inquire whether Graham N. Fitch and Jesse D. Bright or Henry S. Lane and W. M. McCarty, or any one of them, has been elected to the office of Senator of the United States from the State of Indiana as provided by the Constitution of the United States, and in accordance with the laws and usages of the State of Indiana, and report the facts connected with and bearing on the supposed election of each to the Senate, and that the contestants be allowed to appear at the bar of the Senate when such report shall be made and argue their right to seats,"

After debate,

A division of the motion made by Mr. Harlan was called for by Mr. Stuart; and the question being taken on the first division, viz, "That all the papers in this case be recommitted to the Committee on the Judiciary," it was determined in the negative—yeas 14, nays 32.

On motion by Mr. Pugh, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Cameron, Chandler, Clark, Collamer, Doolittle, Douglas, Fessenden, Foot, Hamlin, Harlan, King, Seward, Trumbull, and Wilson.

Those who voted in the negative are Messrs. Bayard, Benjamin, Bigler, Broderick, Brown, Chesnut, Clay, Clingman, Davis, Fitzpatrick, Green, Gwin, Houston, Hunter, Iverson, Johnson of Arkansas, Johnson of Tennessee, Jones, Kennedy, Lane, Mallory, Mason, Polk, Pugh, Reid, Rice, Shields, Slidell, Smith, Stuart, Toombs, and Ward.

So the motion to recommit with instructions was disagreed to.

The question recurring on agreeing to the amendment proposed by Mr. Pugh to the amendment proposed by Mr. Seward, it was determined in the affirmative—yeas 30, nays 16.

On motion by Mr. Seward, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Benjamin, Bigler, Brown, Chesnut, Clay, Clingman, Davis, Fitzpatrick, Green, Gwin, Houston, Hunter, Iverson, Johnson of Arkansas, Jones, Kennedy, Lane, Mallory, Mason, Polk, Pugh, Reid, Rice, Shields, Slidell, Smith, Stuart, Toombs, and Ward.

Those who voted in the negative are Messrs. Broderick, Cameron, Chandler, Clark, Collamer, Doolittle, Douglas, Fessenden, Foot, Hamlin, Harlan, Johnson of Tennessee, King, Seward, Trumbull, and Wilson.

On the question to agree to the amendment of Mr. Seward, as amended, it was determined in the affirmative—yeas 29, nays 16.

On motion by Mr. King, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Benjamin, Bigler, Brown, Chesnut, Clay, Clingman, Davis, Fitzpatrick, Green, Gwin, Houston, Hunter, Iverson, Johnson of Arkansas, Jones, Kennedy, Lane, Mallory, Mason, Polk, Pugh, Reid, Rice, Shields, Slidell, Smith, Stuart, Toombs, and Ward.

Those who voted in the negative are Messrs. Broderick, Cameron, Chandler, Clark, Collamer, Doolittle, Douglas, Fessenden, Foot, Hamlin, Harlan, Johnson of Tennessee, King, Seward, Trumbull, and Wilson.

On the question to agree to the resolution from the Committee on the Judiciary, amended, as follows:

"*Resolved*, That the committee be discharged from the further consideration of the memorial of the State of Indiana, and that the resolution of the Senate adopted June 12, 1858, affirming the right of Graham N. Fitch and Jesse D. Bright as Senators elected from the State of Indiana, the former until the 4th day of March, 1861, and the latter until the 4th day of March, 1863, was a final decision of all the premises then in controversy, and conclusive, as well upon the legislature of Indiana, and all persons claiming under its authority, as upon the Senators named in the resolution,"

It was determined in the affirmative—yeas 30, nays 15.

On motion by Mr. Johnson, of Tennessee, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Benjamin, Bigler, Brown, Chesnut, Clay, Clingman, Davis, Fitzpatrick, Green, Gwin, Houston, Hunter, Iverson, Johnson of Arkansas, Johnson of Tennessee, Jones, Kennedy, Lane, Mallory, Mason, Polk, Pugh, Reid, Rice, Shields, Slidell, Smith, Stuart, Toombs, and Ward.

Those who voted in the negative are Messrs. Broderick, Cameron, Chandler, Clark, Collamer, Doolittle, Douglas, Fessenden, Foot, Hamlin, Harlan, King, Seward, Trumbull, and Wilson.

So the reported resolution, as amended, was agreed to.

[The debates are found on pages 1014–1019 of the Congressional Globe, part 1, 2d sess. 35th Cong., and on pages 128–148 of the Appendix to the Congressional Globe, part 2, 2d sess. 35th Cong.]

1858, affirming the right of Graham N. Fitch and Jesse D. Bright as Senators elected from the State of Indiana, the former until the 4th day of March, 1861, and the latter until the 4th day of March, 1863, was a final decision of all the premises then in controversy, and conclusive as well upon the legislature of Indiana, and all persons claiming under its authority, as upon the Senators named in the resolution."

On motion by Mr. Harlan "That all the papers in this case be recommitted to the Committee on the Judiciary with instructions to inquire whether Graham N. Fitch and Jesse D. Bright or Henry S. Lane and W. M. McCarty, or any one of them, has been elected to the office of Senator of the United States from the State of Indiana as provided by the Constitution of the United States, and in accordance with the laws and usages of the State of Indiana, and report the facts connected with and bearing on the supposed election of each to the Senate, and that the contestants be allowed to appear at the bar of the Senate when such report shall be made and argue their right to seats,"

After debate,

A division of the motion made by Mr. Harlan was called for by Mr. Stuart; and the question being taken on the first division, viz, "That all the papers in this case be recommitted to the Committee on the Judiciary," it was determined in the negative—yeas 14, nays 32.

On motion by Mr. Pugh, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Cameron, Chandler, Clark, Collamer, Doolittle, Douglas, Fessenden, Foot, Hamlin, Harlan, King, Seward, Trumbull, and Wilson.

Those who voted in the negative are Messrs. Bayard, Benjamin, Bigler, Broderick, Brown, Chesnut, Clay, Clingman, Davis, Fitzpatrick, Green, Gwin, Houston, Hunter, Iverson, Johnson of Arkansas, Johnson of Tennessee, Jones, Kennedy, Lane, Mallory, Mason, Polk, Pugh, Reid, Rice, Shields, Slidell, Smith, Stuart, Toombs, and Ward.

So the motion to recommit with instructions was disagreed to.

The question recurring on agreeing to the amendment proposed by Mr. Pugh to the amendment proposed by Mr. Seward, it was determined in the affirmative—yeas 30, nays 16.

On motion by Mr. Seward, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Benjamin, Bigler, Brown, Chesnut, Clay, Clingman, Davis, Fitzpatrick, Green, Gwin, Houston, Hunter, Iverson, Johnson of Arkansas, Jones, Kennedy, Lane, Mallory, Mason, Polk, Pugh, Reid, Rice, Shields, Slidell, Smith, Stuart, Toombs, and Ward.

Those who voted in the negative are Messrs. Broderick, Cameron, Chandler, Clark, Collamer, Doolittle, Douglas, Fessenden, Foot, Hamlin, Harlan, Johnson of Tennessee, King, Seward, Trumbull, and Wilson.

On the question to agree to the amendment of Mr. Seward, as amended, it was determined in the affirmative—yeas 29, nays 16.

On motion by Mr. King, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Benjamin, Bigler, Brown, Chesnut, Clay, Clingman, Davis, Fitzpatrick, Green, Gwin, Houston, Hunter, Iverson, Johnson of Arkansas, Jones, Kennedy, Lane, Mallory, Mason, Polk, Pugh, Reid, Rice, Shields, Slidell, Smith, Stuart, Toombs, and Ward.

Those who voted in the negative are Messrs. Broderick, Cameron, Chandler, Clark, Collamer, Doolittle, Douglas, Fessenden, Foot, Hamlin, Harlan, Johnson of Tennessee, King, Seward, Trumbull, and Wilson.

On the question to agree to the resolution from the Committee on the Judiciary, amended, as follows:

"*Resolved*, That the committee be discharged from the further consideration of the memorial of the State of Indiana, and that the resolution of the Senate adopted June 12, 1858, affirming the right of Graham N. Fitch and Jesse D. Bright as Senators elected from the State of Indiana, the former until the 4th day of March, 1861, and the latter until the 4th day of March, 1863, was a final decision of all the premises then in controversy, and conclusive, as well upon the legislature of Indiana, and all persons claiming under its authority, as upon the Senators named in the resolution,"

It was determined in the affirmative—yeas 30, nays 15.

On motion by Mr. Johnson, of Tennessee, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Benjamin, Bigler, Brown, Chesnut, Clay, Clingman, Davis, Fitzpatrick, Green, Gwin, Houston, Hunter, Iverson, Johnson of Arkansas, Johnson of Tennessee, Jones, Kennedy, Lane, Mallory, Mason, Polk, Pugh, Reid, Rice, Shields, Slidell, Smith, Stuart, Toombs, and Ward.

[Special session of Senate, March, 1857.]

SIMON CAMERON,

Senator from Pennsylvania from March 17, 1845, *till March* 3, 1849; *from March* 4, 1857, *till he resigned in March*, 1861; *and from March* 4, 1867, *till he resigned in March*, 1877.

Soon after Mr. Cameron had taken his seat in the Senate for the term beginning March 4, 1857, a protest against the legality of his election by certain members of the legislature of Pennsylvania was presented to the Senate. The subject was referred to the Committee on the Judiciary. The committee reported that the grounds of the protest were (1) that there was not a concurrent majority of each house in favor of Mr. Cameron; (2) that the State senate did not comply in certain particulars with an act of the State regulating the election of Senators; and (3) that the election was procured "by corrupt and unlawful means." The committee reported in regard to the first ground of the protest that it was "untenable under the statute of Pennsylvania and the uniform practical construction of the Federal Constitution for the last half century;" in regard to the second ground of the protest they reported that the provisions of law alleged to have been disregarded were purely directory, and that a failure to comply with them would not vitiate an election; and in regard to the third ground of the protest, reported that the "allegation was entirely too vague and indefinite" to justify the recommendation of an investigation by the United States Senate. The report ended with the resolution that the committee be discharged from the further consideration of the subject. The minority of the committee concurred with the majority in reference to the two first points, but submitted a report dissenting from the conclusion of the majority in regard to the third point, on the ground that when a protest of this nature comes from a responsible source the Senate should investigate the charges and allow the persons protesting an opportunity of submitting the proof upon which the charges rest. After a brief debate the resolution reported by the committee was adopted.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 3d sess. 34th Cong., 1856-'57, and the report of the committee in the case from Senate Reports, 3d sess. 34th Cong., Report No. 1 of the special session.

The debates in the case are found within pages 387-391 of the Appendix to the Congressional Globe, 3d sess. 34th Cong., 1856-'57.

Special references to the debate of each day are inserted below.

FRIDAY, *January* 16, 1857.

The President *pro tempore* presented the credentials of the Hon. Simon Cameron, elected a Senator by the legislature of Pennsylvania for the term of six years commencing on the 4th day of March next; which were read.

WEDNESDAY, *March* 4, 1857.

The oath prescribed by law was administered to Simon Cameron, and he took his seat in the Senate.

FRIDAY, *March* 6, 1857.

Mr. Bigler presented a protest of fifty-four members of the house of representatives, and a protest of fifteen members of the senate of the State of Pennsylvania against the proceedings under which the Hon. Simon Cameron claims to represent the State in the Senate of the United States from the 4th of March, 1857.

Ordered, That they lie on the table.

MONDAY, *March* 9, 1857.

On motion by Mr. Cameron,

Ordered, That the protest of certain members of the house of representatives of the State of Pennsylvania, and the protest of members of the senate of the said State, presented the 6th of March, be referred to the Committee on the Judiciary.

WEDNESDAY, *March* 11, 1857.

Mr. Benjamin, from the Committee on the Judiciary, to whom were referred a protest of members of the senate, and a protest of members of the house of representatives of the State of Pennsylvania against the election of the Hon. Simon Cameron as a Senator in Congress, submitted a report (No. 1), accompanied by the following resolution:

"*Resolved*, That the Committee on the Judiciary be discharged from the further consideration of the subject."

Ordered, That the report be printed.

Mr. Pugh submitted the views of the minority of the Committee on the Judiciary on the same subject; which were ordered to be printed with the report of the committee.

Mr. Foot submitted the following resolution for consideration:

"*Resolved*, That Simon Cameron is entitled to a seat upon this floor as a legally chosen Senator from the State of Pennsylvania."

[The debate is found on pages 388, 389 of the Appendix to the Congressional Globe referred to in the head-note.]

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Butler (chairman), Bayard, Toombs, Pugh, Benjamin, Collamer, and Trumbull.]

Report of the Committee on the Judiciary, on the protests of certain members of the legislature of Pennsylvania against the election of the Hon. Simon Cameron as a Senator in Congress.

MARCH 11, 1857.—Submitted, and ordered to be printed with the views of the minority of the committee.

The Committee on the Judiciary, to whom was referred the protest of certain members of the senate and house of representatives of the State of Pennsylvania, alleging certain irregularities and illegalities in the election of the Hon. Simon Cameron, a Senator from said State, report:

That the grounds of protest are stated as follows, viz:

First. That there was not a concurrent majority of each house in favor of the candidate declared to be elected.

Second. That the senate did not comply with the requirements of the act of 2d July, 1839, by appointing a teller and making a nomination of persons to fill said office, and giving notice of said appointment and nomination at least one day previous to the meeting of said convention.

In addition to the two grounds aforesaid, the protest presented by the members of the house of representatives charges,

Third. "That the election of the said Simon Cameron was procured, as they are informed and believe, by corrupt and unlawful means, influencing the action and votes of certain members of the house of representatives of this State; and they request that an investigation be ordered by your honorable body, not only into the regularity of the said election, but into the charges herein presented, in order that an opportunity may be afforded of submitting the proof upon which they rest."

In relation to the first two grounds of protest, the committee are unanimously of opinion that no facts are presented tending in the slightest degree to impair the validity of the election of Mr. Cameron.

It is true that the law of Pennsylvania on the subject of the election of Senators requires that each branch of the legislature shall appoint one teller and nominate at least one person to fill such office, and communicate to the other house the names of the persons so appointed and nominated at least one day previous to the joint meeting; but the same law also provides that at the hour of twelve, on the second Tuesday in January next preceding the expiration of the constitutional term of a Senator, the members of both houses shall meet in convention in the chamber of the house of representatives and choose a Senator *viva voce* from the persons so nominated as aforesaid; and also expressly provides that the person who shall receive the votes of a majority of the members present shall be declared duly elected.

From the extracts furnished by the protesting parties, taken from the journals of the two houses, it appears that the two houses did meet in joint convention on the day and at the place appointed by law, and in accordance with resolutions passed in each house separately, and that one hundred and thirty-three members, composing the entire legislature of Pennsylvania, were present and voted, and that Simon Cameron received 67 votes, and 66 votes were given for all the other candidates; and that Simon Cameron, having thus obtained a majority of the votes of all the members present, was declared duly elected Senator.

It appears from the journal of the senate that the appointment of a teller and the nomination of candidates, and the communication to the other house of the appointment and nomination so made, all took place on the day of the election, instead of one day previous to the election, as required by the law of the State; but your committee regard this provision of law as purely directory in its nature, and are of opinion that a failure to comply with this formality would under no circumstances suffice to vitiate an election otherwise legal and valid; but where, as in the present case, both houses proceeded without objection from any source to perform their constitutional duty of electing a Senator, the necessity of complying with any particular forms required by law may fairly be considered as waived by common consent, and it is entirely too late, after the result of the voting has been ascertained, to raise a question as to the mode of proceeding.

The objection that there was not a concurrent majority of each house in favor of the candidate declared to be elected is equally untenable under the statute of Pennsylvania, and the uniform practical construction of the Federal Constitution for the last half century.

The third ground of protest is signed by members of the house of representatives of Pennsylvania, but not by the members of the senate of that State.

It is a general allegation "that the election of the said Simon Cameron was procured, as they are informed and *believe, by corrupt and* unlawful means, influencing the action

and votes of certain members of the house of representatives," and the Senate of the United States is asked to investigate the charge.

The committee cannot recommend that this prayer be granted. The allegation is entirely too vague and indefinite to justify such a recommendation. Not a single fact or circumstance is detailed as a basis for the general charge. Neither the nature of the means alleged to be corrupt and unlawful, nor the time, place, or manner of using them, is set forth, nor is it even alleged that the sitting member participated in the use of such corrupt means or, indeed, had any knowledge of their existence. Under no state of facts could your committee deem it consistent with propriety, or with the dignity of this body, to send out a roving commission in search of proofs of fraud in order to deprive one of its members of a seat to which he is, *prima facie*, entitled; still less can they recommend such a course when the parties alleging the fraud and corruption are themselves armed with ample powers for investigation. If it be, indeed, true that members of the house of representatives of Pennsylvania have been influenced by corrupt considerations or unlawful appliances, the means of investigation and redress are in the power of the very parties who seek the aid of the Senate of the United States. Let their complaint be made to the house of which they are members, and which is the tribunal peculiarly appropriate for conducting the desired investigation. That their complaint will meet the respectful consideration of that house your committee are not permitted to doubt. If upon such investigation the facts charged are proven, and if they in any manner involve the character of the recently elected member of this body from the State of Pennsylvania, the Constitution of the United States has not left the Senate without ample means for protecting itself against the presence of unworthy members in its midst.

In the mean time your committee see no reason for initiating any proceeding on the subject, and submit the following resolution:

Resolved, That the Committee on the Judiciary be discharged from the further consideration of the subject.

VIEWS OF THE MINORITY.

The undersigned, a member of the Committee on the Judiciary, dissents from the conclusion at which his colleagues have arrived in reference to the contested election of a Senator for the State of Pennsylvania.

In the protest submitted by forty-four members of the house of representatives in that State will be found an allegation in these words:

"The undersigned further charge that the election of the said Simon Cameron was procured, as they are informed and believe, by corrupt and unlawful means influencing the action and votes of certain members of the house of representatives in this State; and they request that an investigation be ordered by your honorable body, not only into the regularity of the said election, but into the charges herein presented, *in order that an opportunity may be afforded of submitting the proof upon which they rest.*"

It is objected by the majority of the committee that this paragraph does not specifically relate the facts on which a charge of corruption can be predicated.

If the case were only between contestor and contestee, as individuals, there might be some force in the objection; but it is one in which a number of the qualified electors, themselves public agents, inform the Senate that corrupt as well as unlawful means have been used in the election.

The accusation comes from a responsible source, and is too serious, too distinctly and directly made, to be treated with indifference. It concerns the honor of the Senate and the security of the Government that no rule of merely technical character, applicable as between individuals, should prevent a thorough investigation of the case. This would seem to be a duty the more imperative in view of the statute, enacted at the late session, in which very stringent and unusual provisions have been made for the detection of corrupt practices by members of Congress.

The undersigned concurs with the majority in reference to the other points of contest.

G. E. PUGH.

FRIDAY, *March* 13, 1857.

The Senate proceeded to consider the resolution reported by the Committee on the Judiciary, to whom were referred the protests of certain senators and members of the house of representatives of the State of Pennsylvania, against the election of the Hon. Simon Cameron as a Senator in Congress from that State; and, in concurrence therewith,

Resolved, That the Committee on the Judiciary be discharged from the further consideration of the subject.

Mr. Foot, on his motion, obtained leave to withdraw the resolution, submitted by him the 11th instant, respecting the right of the Hon. Simon Cameron to a seat in the Senate.

[The debate that took place on the adoption of the resolution is found on page 391 of the Appendix to the Congressional Globe referred to in the head-note.]

[Thirty-fifth Congress—First session.]

JAMES SHIELDS,

Senator from Minnesota from May 12, 1858, *till March* 3, 1859.

February 26, 1857, Congress passed an act entitled "An act to authorize the people of Minnesota to form a constitution and State government preparatory to their admission into the Union on an equal footing with the original States." The constitution, when formed, having been referred to the Committee on Territories, that committee reported a bill January 26, 1858, entitled "A bill for the admission of Minnesota into the Union," which was approved May 11, 1858. February 25, 1858, a paper purporting to be the credentials of Mr. Shields as a Senator from the State of Minnesota, and a letter from him setting forth the grounds upon which he claimed a right to a seat in the Senate, were presented. He claimed that Minnesota was at that time a State by virtue of the act of February 26, 1857; that that act enabled her on certain terms and conditions to be at once a State; that she had performed those conditions. March 4, 1858, the committee unanimously reported a resolution that Minnesota was not a State of the Union under the Constitution and laws, the grounds on which the resolution was based not being given. No action was taken on the resolution. Mr. Shields was admitted to the seat after the bill admitting the State was approved. It appears from the debates which took place on the question whether the subject was a privileged question, that some Senators thought Mr. Shields entitled to the seat for the reasons given in his letter; that some thought that no act of admission would have been necessary if the Territory had complied with the conditions of the enabling act, but that it had not done so; that others thought that an act of admission was essential even if the conditions of the enabling act had been complied with. Extracts from speeches will show more at length the grounds upon which different Senators proceeded.

May 12, 1858, the day on which the Minnesota Senators were sworn, a debate arose on the question whether the Senators were duly elected in December, 1857, or whether an election must take place after the passage of the act of admission. This debate is found on pages 2076, 2077 of the Congressional Globe, part 3, 1st sess. 35th Cong. There was no division of the Senate on the question.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 1st sess. 35th Cong.; the report of the committee, from Senate Reports, 1st sess. 35th Cong., vol. 1, No. 101; the letter of Mr. Shields, from the Congressional Globe, 1st sess. 35th Cong., part 1, pages 861, 862, and extracts from speeches from the same volume of the Globe.

The debates in the case are found on pages 861-867 of the Congressional Globe, part 1, 1st sess. 35th Cong.

LETTER OF MR. SHIELDS.

WASHINGTON, *February* 24, 1858.

SIR: I beg leave to offer a few reasons to show that Minnesota is one of the sovereign States of this Union. My first proposition is, that there are only two forms of political organization under which a community of American citizens can legitimately exist within the jurisdiction and under the Constitution of the United States. The one is the organization of a Territory of the Union; the other, that of a State of the Union. These are the only determinate shapes into which political communities can be molded under our Constitution. Each has its appropriate place in our federal system. A community of American citizens living under a territorial organization is in direct and legitimate connection with the Federal Government. That same community, transformed into a State, is also in direct legitimate connection with the Federal Government. In the transition from a Territory to a State, there is no point of time at which this connection can by any possibility be broken. The territorial government continues in full force until it is superseded by a State government; and whenever the people constitute themselves lawfully into a State, it is, *Io instanti*, a State of the Union. There is no such political anomaly as a State out of the Union, or not yet in the Union. These erroneous terms have been applied so vaguely to communities whose condition is not easily determined that the public begin to think there must be some intermediate provisional, probationary state, in which communities are sometimes kept on their passage from the condition of Territories to that of sovereign States of the Union. California was denominated, not many years ago, a State out of the Union. Minnesota is, I suppose, at present considered by some a State not yet in the Union, or, perhaps, a provisional State. Certainly the representatives of Minnesota are at present in a provisional dilemma, not knowing whether they represent a State in the Union or out of the Union.

I now beg leave to refer you to the law of 1857 authorizing the people of Minnesota to form a State government. The first section contains the following language: "The inhabitants of Minnesota are hereby authorized to form for themselves a constitution and State government by the name of Minnesota, and to come into the Union on an equal footing with the original States, according to the Federal Constitution." Here the authority is absolute and unconditional, first, to form a constitution and State govern-

cause, you were to refuse to administer to me the oath, the argument of the gentleman from Virginia would apply—'Oh, this is no breach of privilege; you are not a Senator; your State has certified you to be a Senator; the legislature has declared you to be a Senator; but the Federal authorities require you to take an oath, and that oath is necessary to make you a Senator.' No, sir; I am as much a Senator before I take the oath as I am afterwards. It contributes nothing to make me a Senator. If I fail to take that oath and presume to act without it, I am guilty of an offense; but I am a Senator before. Can you treat any gentleman elected to this body in this manner—refuse to administer to him the oath, and then tell him, 'For that cause I have annulled you as a Senator, and you can make no question of privilege in regard to it; one must be a Senator before a question of privilege can attach to him; you are not one, because I have not sworn you; and I will not swear you, because I do not intend that you shall act as a Senator?' If that is not a breach of privilege it is utterly incomprehensible to me what can be. It is a breach of privilege—a flagrant one; and it is not less a breach of privilege because there is the power in those who commit it to avoid responsibility for it."

[Extract from remarks of Mr. Toombs, of Georgia, citing the case of Ohio, page 866, part 1, of the Congressional Globe referred to in the head-note.]

"In 1802, when Ohio, under an enabling act, had made a constitution and went on under the regular forms to constitute a State government, a committee of this body was appointed. You will not find it in the printed Journals, but it is now in manuscript in the Secretary's office. The committee were to inquire whether or not Ohio was a State. They said Congress had passed an enabling act, that Ohio had complied with the conditions, and that nothing else was necessary but to extend the laws of the United States over her. They did that, and swore in the members. They decided that she had complied with all the conditions, and was a State."

[Extract from remarks of Mr. Brown, of Mississippi, maintaining that Minnesota could not become a State until the passage of an act of admission, page 866, part 1, of the Congressional Globe referred to in the head-note.]

"Now, is Minnesota a State of the Union? I shall vote for the resolution proposed by the Senator from Georgia, but I do it in deference to the judgment of other gentlemen, and to get clear of the question now, and not because there is one single shade of a shadow of doubt on my mind on the subject. Minnesota is not a State of the Union. If she is, she must have been made so by the enabling act. There is no pretense that she has become a State in any other way. Who knows? How has it been Congressionally ascertained that she has complied with the enabling act? Where is the judgment on that subject? How has it been ascertained that her constitution does not infringe or violate the Constitution of the United States? When was it ascertained and put upon the record that her constitution is republican in its form? All these things may be true, but they have not been ascertained. There is nothing on the record to show that they are true. Where is the evidence that in fixing her boundaries she has not run into the adjoining States and cut off a part of Iowa and Wisconsin? Has it been ascertained that that is not true? Suppose, without inquiry, just by virtue of the enabling act, she is now in the Union, and it turns out that her constitution is not republican in form, that her boundaries violate the boundaries of the adjoining States, that she has in other respects violated the Constitution of the United States: then what? Is she out of the Union? Do you break up the Union by turning her out to-morrow as soon as you ascertain that these things are true? If she is in the Union, she is in from the day her constitution was passed by the members of the convention which made it, for you have done nothing to give sanction to it since that. If she is in by virtue of the enabling act she is in from the very hour when the convention made the constitution; and then I suppose the very instant you find out that her constitution is in violation of the Constitution of the United States she goes out. That is an act of dissolution.

"I speak of these matters simply to show what strikes me to be the absurdity of declaring a State in the Union in this sort of informal way. If she cannot be in the Union with a constitution anti-republican; if she cannot be in with boundaries which infringe the boundaries of other States; if she cannot be in because her constitution provides for orders of nobility, stars, and garters, and all that; if she cannot be in for any one of the hundred reasons which I could name, then there must be a necessity for ascertaining that these objections do not exist before she is in at all. Who has ascertained it? It is the duty of Congress under the clause of the Constitution which authorizes it to admit new States to ascertain all these points. When they have done it and put that ascertainment in the form of a judgment on the records, the State is in, and not till then. About this I have no doubt, and I am astonished to find that anybody else has; but still in deference to the opinion of other gentlemen, and to get clear of the question, I *will vote for the resolution* of the Senator from Georgia."

THURSDAY, *February* 25, 1858.

Mr. Crittenden presented, as a privileged subject, a letter from the Hon. James Shields, setting forth the grounds upon which he claims a right to a seat as a Senator from the State of Minnesota; which was read.

Mr. Crittenden also presented a paper purporting to be the credentials of the Hon. James Shields as a Senator from the State of Minnesota; which was read; and moved that the oath of office be administered to Mr. Shields, and that he be admitted to a seat in the Senate.

Mr. Johnson, of Arkansas, raised the question of order, whether the subject presented by Mr. Crittenden was a *privileged* subject.

The Vice-President submitted the question for the decision of the Senate.

On motion by Mr. Johnson, of Arkansas, that the subject lie on the table, it was determined in the negative—yeas 22, nays 26.

On motion by Mr. Iverson, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allen, Biggs, Bright, Brown, Clay, Evans, Green, Hammond, Hunter, Iverson, Johnson of Arkansas, Johnson of Tennessee, Jones, Mallory, Mason, Pearce, Polk, Sebastian, Slidell, Thomson of New Jersey, Toombs, and Wright.

Those who voted in the negative are Messrs. Bell, Benjamin, Broderick, Chandler, Clark, Collamer, Crittenden, Dixon, Doolittle, Douglas, Durkee, Fessenden, Fitch, Foot, Foster, Gwin, Hamlin, Harlan, Houston, King, Pugh, Seward, Simmons, Sumner, Trumbull, and Wilson.

Whereupon

Mr. Toombs submitted the following resolution:

"*Resolved*, That the question of the admission of James Shields to a seat in this body, as a Senator from the State of Minnesota, be referred to the Judiciary Committee, with instructions to inquire whether or not Minnesota is a State of the Union under the Constitution and laws."

The Senate proceeded to consider the resolution; and the resolution was agreed to.

THURSDAY, *March* 4, 1858.

Mr. Bayard, from the Committee on the Judiciary, who were instructed by a resolution of the Senate to inquire whether or not Minnesota is a State of the Union under the Constitution and laws, submitted a report (No. 104), accompanied by the following resolution:

"*Resolved*, That Minnesota is not a State of the Union under the Constitution and laws."

On motion by Mr. Bayard,

Ordered, That the report be printed.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Bayard, chairman, Toombs, Pugh, Benjamin, Green, Collamer, and Trumbull.]

IN THE SENATE OF THE UNITED STATES.

MARCH 4, 1858.—Ordered to be printed.

Mr. Bayard submitted the following report:

The Senate referred to the Committee on the Judiciary, on the 25th ultimo, the following resolution:

"*Resolved*, That the question of the admission of James Shields to a seat in this body, as a Senator from the State of Minnesota, be referred to the Judiciary Committee, with instructions to inquire whether or not Minnesota is a State of the Union under the Constitution and laws."

Having considered the question as to which they were by the foregoing resolution instructed to inquire, the committee have unanimously adopted the following resolution.

Resolved, That Minnesota is not a State of the Union under the Constitution and laws.

COMPENSATION OF SENATORS.

TUESDAY, *May* 25, 1858.

The Vice-President laid before the Senate a letter of the secretary of the Senate, stating the direction of the Vice-President as to the time at which the compensation of the Senators from Minnesota is to commence.

Ordered, That it be *referred to the Committee on the Judiciary*.

THURSDAY, *June* 3, 1858.

Mr. Bayard, from the Committee on the Judiciary, to whom was referred a letter of the Secretary of the Senate in relation to the compensation of the Senators from Minnesota, reported:

That there is no express provision in the act regulating the compensation of members of Congress applicable to the particular case presented; but, in the opinion of the committee, a correct construction of the act of August 16, 1856, forbids the allowance of compensation until the State of Minnesota was admitted into the Union, and that the compensation to the Senators from that State should commence on the day of admission, May 11, 1858.

[There was no debate on the subject of compensation, nor any action on the report.]

[Thirty-fifth Congress—First session.]

HENRY M. RICE,

Senator from Minnesota from May 12, 1858, to March 3, 1859.

May 12, 1858, the credentials of Mr. Rice were presented, and he took his seat in the Senate. On the same day the following resolution was submitted by Mr. Harlan, of Iowa, for consideration:

"*Resolved*, That a committee be appointed to inquire into the allegation of fraud and extortion made against Henry M. Rice as agent of the Secretary of War in the sale of the Fort Crawford reservation, by settlers on said reservation, and that said committee have power to send for persons and papers." This resolution was amended so as to make the committee consist of five members instructed to make the investigation. That committee reported [illegible] after an examination of all the testimony adduced, they do not find that a sufficient foundation exists for a charge of criminality to, or arraigns the integrity of Mr. Rice and finding no cause in the prosecution of the investigation which, in the opinion of the committee, tend to the benefit of the public or of a seat in the Senate, they herewith submit the record in the case as a part of the report, and ask to be discharged from the further consideration of the subject." The report was [illegible] agreed to.

The history of the case here given consists of a summary of the proceedings in the Senate relating to it from the Senate Journal, 1st sess. 35th Cong. which includes the report of the committee.

The debates on the case, which are very brief, are found in Congressional Globe, part 3, 1st sess. 35th Cong. The report accompanying the report of the committee is found in Senate Reports, 1st sess. 35th Cong. vol. 1 No. 114.

WEDNESDAY, May 12, 1858.

Mr. Toombs presented the credentials of the Hon. Henry M. Rice, elected a Senator by the legislature of the State of Minnesota; which were read.

The oath prescribed by law was administered to the Hon. Henry M. Rice, and he took his seat in the Senate.

* * * * * * *

Mr. Harlan submitted the following resolution for consideration:

"Whereas the settlers on Fort Crawford reservation, in the state of Iowa, allege that they have been defrauded by Mr. Henry M. Rice, as agent of Hon. John B. Floyd, Secretary of War, in the sale of their claims as settlers on said reservation, viz:

"1. That said Secretary of War instructed said Henry M. Rice to sell to the settlers on said reservations their claims at one dollar and twenty-five cents per acre; that said Rice required said settlers to pay for their claims at the rate of one dollar and twenty cents per acre, and receipted to them, on the payment of said one dollar and twenty cents per acre, for but one dollar and twenty-five cents per acre, and refused to receipt to them for the remaining twenty-five cents per acre received of them by him, as aforesaid.

"2. That sundry cases in which settlers applied to said Rice for receipts for their said claims, he referred them to his clerk, who charged them fees, varying from ten to twenty dollars each, in addition to the said one dollar and twenty cents per acre, for the same to purchase their said claims; that these fees were charged and received by said Rice unofficially, and, said settlers believe, through the intervention of his clerk.

"3. That said Rice negligently failed to give said settlers reasonable notice of the time of said sale, and thereby subjected them to the necessity of borrowing money at enormous rates of interest with which to purchase their said claims.

"4. That said Rice defrauded one of said settlers of the price to purchase his claim under the instruction of the Secretary of War, by stipulating and receiving from him a quit-claim to a part of the land embraced in said claim. Therefore,

"*Resolved*, That a committee be appointed to inquire into the allegation of fraud and extortion made against Henry M. Rice, as agent of the Secretary of War in the sale of the Fort Crawford reservation, by settlers on said reservation, and that said committee have power to send for persons and papers."

FRIDAY, May 14, 1858.

Mr. Rice submitted the following resolution for consideration:

"*Resolved*, That a select committee, to consist of five members, be appointed to investigate the charges preferred by certain citizens of Iowa against the Fort Crawford reserve, as to the conduct of Henry M. Rice, agent, appointed by the Secretary of War, to superintend the sale of that reserve; that said committee have power to send for persons and papers and to report by bill or otherwise."

SATURDAY, *May* 15, 1858.

The Senate proceeded to consider the resolution yesterday submitted by Mr. Rice; and having been amended, the resolution was agreed to, as follows:

"*Resolved*, That the Committee on Military Affairs and the Militia be instructed to investigate the charges preferred by certain citizens of Iowa, settlers upon the Fort Crawford reserve, as to the conduct of Henry M. Rice, special agent, appointed by the Secretary of War, to superintend the sale of that reserve; that said committee have power to send for persons and papers and to report by bill or otherwise."

WEDNESDAY, *June* 9, 1858.

[The committee consisted of Messrs. Davis (chairman), Fitzpatrick, Johnson of Arkansas, Iverson, Broderick, Wilson, and King.]

Mr. Davis, from the Committee on Military Affairs and the Militia, to whom was referred the resolution of the Senate of the 15th ultimo, to inquire into certain charges made by citizens of Iowa against the Hon. Henry M. Rice, a Senator from Minnesota, reported:

That, under the authority of the resolution, they procured from the War Department, and elsewhere, papers exhibiting the facts in the case, and had before them twenty-two witnesses, who testified under oath as to the allegations made against Mr. Rice; and, after an examination of all the testimony adduced, they do not find that it sustains any allegation which imputes criminality to, or arraigns the integrity of, Mr. Rice, and finding nothing in the developments of the investigation which, in the opinion of the committee, tend to disqualify him for a seat in the Senate, they herewith submit the record in the case as a part of this report and ask to be discharged from the further consideration of the subject.

The Senate proceeded, by unanimous consent, to consider the report; and the report was unanimously agreed to.

Ordered, That the report (No. 314) be printed.

[Thirty-sixth and Thirty-seventh Congresses.]

EXPULSION OF SENATORS.

1861, a motion was submitted that the Journal be so corrected as to record the fact Davis, Mallory, Yulee, Clay, and Fitzpatrick had announced that the States, from which ıators, respectively, had seceded, and that they thereupon withdrew from the Senate. s offered as an amendment that these names "be stricken from the list of Senators." d that both motions lie on the table. March 13, 1861, a resolution was submitted that n, Davis, Mallory, Clay, Toombs, and Benjamin having withdrawn from the Senate n this body have thereby become vacant." Certain other Senators had withdrawn revious session and their terms of office had expired March 3, 1861. See foot-notes.) g day the Senate resolved that the seats of these members having become vacant "the directed to omit their names respectively from the roll."
l, a resolution was submitted that Messrs. Mason, Hunter, Clingman, Bragg, Chestnut, ebastian,* Mitchel, Hemphill, and Wigfall be "expelled from the Senate." The pream- ıt it was "apparent that these Senators were engaged in the conspiracy for the destruc- nion, or, with full knowledge of the conspiracy, had failed to advise the Government s, or aid in its suppression." The following day the resolution was agreed to.
l, 1861, a resolution was submitted that John C. Breckinridge be expelled from the Sen- ımended by a preamble stating that he "had joined the enemies of his country," and o.
lk, Johnson, and Bright were also expelled in the second session of the Thirty-seventh hese cases were referred to a committee and reported on and are given as separate cases 215, 217. See also cases of Messrs. Wigfall, Stark, and Powell, pages 1/6, 1/9, 254.
r of these expulsion cases here given consists of a transcript of the proceedings of the ng to them from Senate Journals, 2d sess. 36th Cong., and 1st and 2d sess. 37th Cong. ırences to the debates are inserted below.

[Second session of the Thirty-sixth Congress.]

TUESDAY, *January* 22, 1861.

-President stated that no notice had been taken in the Journal of the with- m the Chamber on yesterday, and that no paper had been filed with the ffficer by those Senators notifying him that they had withdrawn from the l that he would like some instruction as to what vacancies exist in the com- l whether the names of those Senators should continue to be called in taking d nays.
amin submitted the following motion:
That the Journal of the proceedings of the Senate be so corrected as to record t the Senators from the States of Florida and Alabama, and the Hon. Jeffer- Senator of the State of Mississippi, made announcement that the said States Alabama, and Mississippi, had seceded from the Union, had resumed the gated by the said several States to the United States of America, and that id Senators, considered themselves by reason of said action of said States as ıger entitled to retain their seats as Senators, and accordingly thereupon with- the Senate.
te proceeded to consider the said motion; and
n by Mr. Douglas to amend the same by striking out all after the word and in lieu thereof inserting:
efferson Davis of Mississippi, Stephen R. Mallory and David L. Yulee of C. Clay and Benjamin Fitzpatrick of Alabama, having announced to the r withdrawal from the same,
, That their names be stricken from the list of Senators, and the Secretary longer to call the same."
ıate,
n by Mr. Seward that the motion of Mr. Benjamin and the proposed amend- the table,
amin raised a question of order, to wit: Whether it was in order to move to ıe table a motion to correct the Journal of the Senate of the preceding day;

-President decided that the motion was in order; and
uestion to agree to the motion of Mr. Seward, it was determined in the affirm- 32, nays 22.

ımble and resolution was revoked and annulled, so far as Mr. Sebastian was concerned, ı of the Senate, March 3, 1877. See report No. 513, 1st sess. 44th Cong. The same reso- ded for settling the unpaid accounts of Mr. Sebastian.
arks of the Senators on their withdrawal are found on pages 484-487 of the Congres- , part 1, 2d sess. 36th Cong.

On motion by Mr. Seward, the yeas and nays being desired by one-fifth of the Sen tors present,

Those who voted in the affirmative are Messrs. Anthony, Baker, Bigler, Binghar Chandler, Clark, Collamer, Crittenden, Dixon, Doolittle, Durkee, Fessenden, Fite Foot, Foster, Grimes, Gwin, Hale. Harlan, Johnson of Tennessee, King, Latham, Mo rill, Saulsbury, Seward, Simmons, Sumner, Ten Eyck, Thomson, Wade, Wilkinson, ar Wilson.

Those who voted in the negative are Messrs. Benjamin, Bragg, Bright, Clingma Douglas, Green, Hemphill, Hunter, Iverson, Johnson of Arkansas, Kennedy, Lane, M son, Nicholson, Pearce, Polk, Powell, Rice, Sebastian, Slidell, Trumbull, and Wigfal

So it was

Ordered, That the motion of Mr. Benjamin, and the proposed amendment, lie on tl table.

[The debate is found on pages 500–505 of the Congressional Globe, part 1, 2d ses 36th Cong.]

[Special session of Senate, March, 1861.]

WEDNESDAY, *March* 13, 1861.

Mr. Fessenden submitted the following resolution for consideration:

"*Resolved*, That Albert G. Brown and Jefferson Davis of Mississippi, Stephen R. Ma lory of Florida, Clement C. Clay, jr., of Alabama, Robert Toombs of Georgia, and Jud P. Benjamin of Louisiana, having announced* that they are no longer members of tl Senate, and having withdrawn therefrom, their seats in this body have thereby becon vacant, and the Secretary is directed to strike their names from the roll of members."

THURSDAY, *March* 14, 1861.

On motion by Mr. Fessenden that the Senate proceed to the consideration of the re olution yesterday submitted by him, declaring the seats of certain Senators vacant, ar directing the Secretary to strike their names from the roll of the Senate, it was dete mined in the affirmative—yeas 26, nays 13.

On motion by Mr. Douglas, the yeas and nays being desired by one-fifth of the Sen tors present,

Those who voted in the affirmative are Messrs. Anthony, Bingham, Chandler, Clar Collamer, Cowan, Doolittle, Fessenden, Foot, Foster, Grimes, Hale, Harlan, Harri Howe, King, Lane, Morrill, Simmons, Sumner, Ten Eyck, Thomson, Trumbull, Wad Wilkinson, and Wilson.

Those who voted in the negative are Messrs. Breckinridge, Bright, Clingman, Dou las, Hunter, Latham, Mason, Mitchel, Nesmith, Nicholson, Polk, Powell, and Rice.

So the motion was agreed to; and the Senate proceeded to consider the said resol tion; and

The resolution having been modified, on the motion of Mr. Fessenden, to read a follows:

"*Resolved*, That Albert G. Brown and Jefferson Davis of Mississippi, Stephen R. Ma lory of Florida, Clement C. Clay, jr., of Alabama, Robert Toombs of Georgia, and Jud P. Benjamin of Louisiana, having announced that they are no longer members of tl Senate, and having withdrawn therefrom, their seats in this body have thereby becon vacant, and the Secretary is directed to omit their names from the roll of members;"

On motion by Mr. Bayard to amend the resolution by striking out all after the wo "resolved," and in lieu thereof inserting:

"That Albert G. Brown and Jefferson Davis of Mississippi, Stephen R. Mallory of Fl ida, Clement C. Clay, jr., of Alabama, Robert Toombs of Georgia, and Judah P. Benj min of Louisiana, having announced that by the secession of their respective States th were no longer members of the Senate, and withdrawn therefrom, the Secretary is d rected to omit their names in calling the roll of the Senate,"

It was determined in the negative—yeas 12, nays 26.

On motion by Mr. Bayard, the yeas and nays being desired by one-fifth of the Sen tors present,

Those who voted in the affirmative are Messrs. Bayard, Breckinridge, Bright, Clin man, Hunter, Mason, Mitchel, Nicholson, Polk, Powell, Rice, and Thomson.

Those who voted in the negative are Messrs. Anthony, Baker, Bingham, Chandl

* For announcement of Mr. Brown, see page 352 of the Congressional Globe, part 1, 2d sess. 36 Cong.; for that of Mr. Benjamin, see pages 721, 722, *Ib.* The terms of Messrs. Yulee, Fitzpatric Iverson, and Slidell, who had withdrawn from the Senate during the past session, had expir March 3, 1861. For announcement of withdrawal by Mr. Iverson, see page 589 of the Congression Globe, part 1, 2d sess. 36th Cong.; for that by Mr. Slidell, see pages 720, 721, *Ib.*

Clark, Collamer, Cowan, Doolittle, Douglas, Fessenden, Foot, Foster, Grimes, Harlan, Harris, Howe, King, Lane, Morrill, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, and Wilson.

After debate,

On motion by Mr. Collamer that the Senate proceed to the consideration of executive business, it was determined in the affirmative; and after the consideration of executive business, the doors were opened.

The Senate resumed the consideration of the resolution of Mr. Fessenden; and

The resolution having been further modified, on the motion of Mr. Clark, to read as follows:

"Whereas the seats of Albert G. Brown and Jefferson Davis of Mississippi, Stephen R. Mallory of Florida, Clement C. Clay, jr., of Alabama, Robert Toombs of Georgia, and Judah P. Benjamin of Louisiana, as members of the Senate have become vacant: Therefore,

"*Resolved*, That the Secretary be directed to omit their names, respectively, from the roll,"

On motion by Mr. Mason to amend the resolution by striking out all after the word "resolved," and in lieu thereof inserting:

"That Albert G. Brown and Jefferson Davis of Mississippi, Stephen R. Mallory of Florida, Clement C. Clay, jr., of Alabama, Robert Toombs of Georgia, and Judah P. Benjamin of Louisiana, having ceased to be members of the Senate, the Secretary be directed to omit their names from the roll,"

It was determined in the negative—yeas 10, nays 24.

On motion by Mr. Mason, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Breckinridge, Bright, Clingman, Hunter, Mason, Mitchel, Nicholson, Polk, Powell, and Rice.

Those who voted in the negative are Messrs. Anthony, Bingham, Chandler, Clark, Collamer, Cowan, Doolittle, Fessenden, Foot, Foster, Harris, Howe, Johnson, King, Lane, Morrill, Nesmith, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, and Wilson.

No further amendment being proposed,

On the question to agree to the resolution as modified on the motion of Mr. Clark, it was determined in the affirmative.

So the resolution was agreed to.

[The debate is found on pages 1454-1456 of the Congressional Globe, part 2, 2d sess. 36th Cong.]

[First session of the Thirty-seventh Congress.]

WEDNESDAY, *July* 10, 1861.

Mr. Clark submitted the following resolution for consideration:

"Whereas a conspiracy has been formed against the peace, union, and liberties of the people and Government of the United States, and in furtherance of such conspiracy a portion of the people of the States of Virginia, North Carolina, South Carolina, Tennessee, Arkansas, and Texas have attempted to withdraw those States from the Union, and are now in arms against the Government; and

"Whereas James M. Mason and Robert M. T. Hunter, Senators from Virginia; Thomas L. Clingman and Thomas Bragg, Senators from North Carolina; James Chesnut, jr., a Senator from South Carolina; A. O. P. Nicholson, a Senator from Tennessee; William K. Sebastian and Charles B. Mitchel, Senators from Arkansas; and John Hemphill and Louis T. Wigfall, Senators from Texas, have failed to appear in their seats in the Senate, and to aid the Government in this important crisis, and it is apparent to the Senate that said Senators are engaged in said conspiracy for the destruction of the Union and Government, or with full knowledge of such conspiracy have failed to advise the Government of its progress or aid in its suppression: Therefore,

"*Resolved*, That the said Mason, Hunter, Clingman, Bragg, Chesnut, Nicholson, Sebastian, Mitchel, Hemphill, and Wigfall be, and they hereby are, each and all of them, expelled from the Senate of the United States."

THURSDAY, *July* 11, 1861.

On motion by Mr. Clark, the Senate proceeded to consider the resolution yesterday submitted by him to expel certain Senators from the Senate of the United States.

On motion by Mr. Latham to amend the resolution by inserting before the word "said," in the second line, the words "names of," and by striking out the words "expelled from the Senate of the United States," and inserting "stricken from the roll, and their seats declared vacant," so that the resolution will read:

"*Therefore, resolved, That the names of said Mason*, Hunter, Clingman, Bragg, Ches-

nut, Nicholson, Sebastian, Mitchel, Hemphill, and Wigfall be, and they hereby a each and all of them, stricken from the roll, and their seats declared vacant,"

It was determined in the negative—yeas 11, nays 32.

On motion by Mr. Latham, the yeas and nays being desired by one-fifth of the Se tors present,

Those who voted in the affirmative are Messrs. Bayard, Breckinridge, Bright, John of Tennessee, Johnson of Missouri, Latham, Nesmith, Polk, Powell, Rice, and Sa bury.

Those who voted in the negative are Messrs. Anthony, Bingham, Browning, Chand Clark, Collamer, Cowan, Dixon, Doolittle, Fessenden, Foot, Foster, Grimes, Hale, Harl Harris, Howe, King, Lane of Indiana, Lane of Kansas, McDougall, Morrill, Pome Sherman, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, Wilmot, and V son.

So the amendment proposed by Mr. Latham was not agreed to.

On the question to agree to the resolution, it was determined in the affirmative—y 32, nays 10.

On motion by Mr. Clark, the yeas and nays being desired by one-fifth of the Sena present,

Those who voted in the affirmative are Messrs. Anthony, Bingham, Browning, Cha ler, Clark, Collamer, Cowan, Dixon, Doolittle, Fessenden, Foot, Foster, Grimes, Ha Harlan, Harris, Howe, King, Lane of Indiana, Lane of Kansas, McDougall, Mor Pomeroy, Sherman, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, Wilm and Wilson.

Those who voted in the negative are Messrs. Bayard, Breckinridge, Bright, Johnso Tennessee, Johnson of Missouri, Latham, Nesmith, Polk, Powell, and Rice.

So the resolution was agreed to, two-thirds of the Senators present having voted the affirmative; and it was

"*Therefore, resolved*, That the said Mason, Hunter, Clingman, Bragg, Chesnut, Ni olson, Sebastian, Mitchel, Hemphill, and Wigfall be, and they hereby are, each a all of them, expelled from the Senate of the United States."

[The debate is found on pages 62–64 of the Congressional Globe, 1st sess. 37th Con

[Second session of the Thirty-seventh Congress.]

WEDNESDAY, *December* 4, 1861.

Mr. Chandler submitted the following resolution for consideration:

"*Resolved*, That John C. Breckinridge be, and he hereby is, expelled from the Se ate."

The Senate proceeded, by unanimous consent, to consider the resolution; and the sa having been amended, on the motion of Mr. Trumbull, to read as follows:

"Whereas John C. Breckinridge, a member of this body from the State of Kentuck has joined the enemies of his country, and is now in arms against the Government had sworn to support: Therefore,

"*Resolved*, That said John C. Breckinridge, the traitor, be, and he hereby is, expel from the Senate,"

On the question to agree to the resolution as amended, it was determined in the affi ative—yeas 37, nays none.

On motion by Mr. Trumbull, the yeas and nays being desired by one-fifth of the Se tors present,

Those who voted in the affirmative are Messrs. Anthony, Browning, Carlile, Chand Clark, Collamer, Cowan, Dixon, Doolittle, Fessenden, Foot, Foster, Grimes, Hale, H lan, Harris, Howe, Kennedy, King, Lane of Indiana, Lane of Kansas, Latham, McD gall, Morrill, Nesmith, Pomeroy, Rice, Sherman, Simmons, Sumner, Ten Eyck, Th son, Trumbull, Wade, Wilkinson, Wilmot, and Wilson.

So the resolution as amended was agreed to, two-thirds of the Senators present h ing voted in the affirmative.

THURSDAY, *December* 5, 1861

Mr. Rice stated that he was not in the Chamber yesterday when the vote was ta upon the resolution expelling John C. Breckinriege from the Senate, and asked una mous consent to be allowed to have his vote recorded in the affirmative upon that qu tion.

Whereupon,

It was unanimously agreed that the name of Mr. Rice be entered upon the lis yeas and nays among those who voted in the affirmative upon the passage of the s resolution.

[Thirty-sixth Congress—Second session.]

LOUIS T. WIGFALL,

Senator from Texas from January 4, 1860, *till July* 11, 1861, *when he was expelled.*

March 8, 1861, a resolution was submitted that Mr. Wigfall be expelled from the Senate. The preamble stated that he had declared in debate that he was a foreigner; that he owed no allegiance to this Government; but that he belonged to and owed allegiance to another and foreign state and government. March 11, the following resolution was moved as an amendment: "Whereas it is understood that the State of Texas has seceded from the Union, and is no longer one of the United States: Therefore, *Resolved*, That she is not entitled to be represented in this body." After brief debate the resolution and amendment were referred, March 12, to the Committee on the Judiciary, by whom they were not reported. Extracts from remarks given below will show the facts and arguments presented in support of the two resolutions.

In the next session of Congress, Mr. Wigfall was expelled by resolution of July 11, 1861 (see page 197).

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journal, 2d sess. 36th Cong.; with extracts from remarks of Messrs. Foster and Clingman.

The debate in the case is found on pages 1447-1451 of the Congressional Globe, part 2, 2d sess. 36th Cong.

FRIDAY, *March* 8, 1861.

Mr. Foster submitted the following resolution for consideration:

"Whereas L. T. Wigfall, now a Senator of the United States from the State of Texas, has declared in debate that he is a foreigner; that he owes no allegiance to this Government, but that he belongs to and owes allegiance to another and foreign state and government: Therefore,

"*Resolved*, That the said L. T. Wigfall be, and he hereby is, expelled from this body."

MONDAY, *March* 11, 1861.

On motion by Mr. Foster, the Senate proceeded to consider the resolution submitted by him, the 8th instant, to expel the Hon. L. T. Wigfall from the Senate; and,

On motion by Mr. Clingman, to amend the resolution by striking out all after the word "whereas," and in lieu thereof inserting:

"It is understood that the State of Texas has seceded from the Union, and is no longer one of the United States: Therefore

"*Resolved*, That she is not entitled to be represented in this body."

Pending debate,

On motion by Mr. Clark that the Senate proceed to the consideration of executive business, it was determined in the affirmative—yeas 28, nays 16.

TUESDAY, *March* 12, 1861.

The Senate resumed the consideration of the resolution submitted by Mr. Foster, the 8th instant, to expel the Hon. L. T. Wigfall from the Senate; and,

On motion by Mr. Simmons,

Ordered, That the resolution, with the amendment submitted by Mr. Clingman, be referred to the Committee on the Judiciary.

[Extract made from remarks made in the Senate, March 11, 1861, by Mr. Foster, of Connecticut, in support of the resolution submitted by him, taken from pages 1447, 1448 of the Congressional Globe referred to in the head-note.]

"I have but very few words to say, Mr. President, either in regard to the resolution or the substitute. I do not propose, at least at present, to enter into any lengthened discussion either of the one or the other; and it is proper, perhaps, that I should state that I have offered the resolution without consultation with my political friends. It is entirely on my own independent responsibility that it is proposed to the body. I have thus offered it without consultation with my political friends; not becausel do not need, as much as any one, advice and aid from them, nor because I am not, on proper occasions, a party man, but because I was desirous of presenting this question to the Senate altogether unconnected with party interests, and stripped, so far as possible, of all party considerations. I shall not, therefore, call upon any member of the Senate, on one side of the Chamber or the other, to support it; and I ask no member for his support of it; but beg every one to pass upon *its naked merits*. *If it* has merits, Senators of course will

vote for it on their own view of those merits. If it has no merits, I trust I should be as far any member of the body from desiring to press it through on any party or political grounds. The priviliges of a seat in this body are certainly of too high a character to be involved in any matter of party, and I should hope that in the consideration and in the decision of this question we shall rise above all such views, and discuss it and determine it upon far more elevated grounds.

"The Constitution provides for the qualification and the manner of the election of members of this body. It provides, in the third section of the first article, that each State shall be entitled to two Senators; and, in other parts of the instrument, provision is made in respect to the necessary age, to be not less than thirty years; that no person shall be eligible who has not been nine years a citizen of the United States; and, finally, it provides that Senators, like other officers, executive and judicial, of the United States, shall take an oath or affirmation to support the Constitution.

"These are substantially the requirements of the Constitution in regard to members of this body; and I take it it is implied that a Senator of the United States shall owe allegiance to the United States; that this shall be his country; that he shall either be a native-born or a naturalized citizen; and that, if not native-born, he shall have been at least nine years a citizen before he is eligible as a member; clearly manifesting the idea that a man shall become thoroughly American in thought and feeling before holding a seat in this body.

"It is not, however, on any technical grounds, as I suppose, as to citizenship, that the Senator from Texas is obnoxious to objection. I suppose he was a native-born citizen of the United States, and I suppose he was duly elected a member of this body; and I do not suppose that when he spoke of himself as a foreigner he meant that he was born out of the jurisdiction of the country, but that he had another meaning in his mind, which he probably would define more readily and perfectly than I could. Still, Mr. President, it seems to me that this body owes it to itself not to allow members to sit here who avow that they are foreigners, who avow that they owe no allegiance to this Government, who avow that they belong to a foreign government; and if that government happens to be in arms against this Government, attacking its troops, seizing its property, expelling from its territory officers and soldiers of the United States by force, tearing down and trampling in the dust the national flag, treating with scorn and contempt every emblem of our country's authority and power, there may be additional reasons why such avowals and declarations should not be passed idly by. What, beside entire contempt of the body, do such declarations indicate, uttered on the floor of the Senate?

"I felt it due to myself, as a member of this body, that we should inquire and decide whether it was consistent with our duty as members of the Senate of the United States to allow one so circumstanced, and avowing such feelings and opinions, longer to hold a seat here. I scarcely need say that I have no personal feeling on the subject. I can say with entire truth that so far as my personal relations with the Senator from Texas are concerned they have been entirely kind and friendly. I stated that this was not a party question, so it certainly is not a personal question, and I certainly shall endeavor to prevent its becoming one. If other members of the body think that it is right and proper for a man avowing these opinions to continue to sit here, I shall have done my duty, and shall feel relieved from a responsibility which I felt pressing upon me previously to offering the resolution. I could not, as it seemed to me, discharge my duty without offering it, and presenting the question distinctly to the decision of the Senate.

"The Senator from North Carolina has suggested a substitute for the resolution; and the question, I suppose, is first on the substitute. The substitute assumes the right of a State to secede from the Union, and it assumes that the State of Texas has seceded, and therefore, as a logical inference, that she is no longer entitled to representation in this body. I must be so unfortunate, if it be unfortunate, as to differ from the Senator from North Carolina in regard to the whole theory of our Constitution and Government. I do not believe that any State of this Union has any right, any power, under the Constitution, to secede, to take itself out of the Union of these States, which go to make up the United States of America. I differ widely and radically from all who entertain any such view of our Constitution and Government as that, and it appears to me to be a claim altogether monstrous. That this Government is one of power and authority; that no State in this Confederacy has any right, under the Constitution, to go out and cease to be a member of this Federal Union, is a proposition which is to me as clear as anything can be which is not absolutely self-evident. I am not, however, about to enter into an argument on the question. I am persuaded that if I were to endeavor to convince gentlemen who entertain the opposite view, and many do, whose opinions perhaps ought to be more weighty than mine, I should not be able to succeed in convincing them of their error. We entertain so precisely opposite and antagonistic views of law and Government and our Constitution, that any argument of mine or any reasoning of mine would *be wholly lost* upon them, as I am free to say theirs would be on me. We might just

as well reason with each other in a foreign language, which the one understood and the other did not, and we should succeed just as well in convincing each other of our error on the one side and of the correctness of the opposite opinion."

[Extract from remarks made in the Senate, March 11, 1861, by Mr. Clingman, of North Carolina, against the adoption of the resolution submitted by Mr. Foster, taken from pages 1448, 1449 of the Congressional Globe referred to in the head-note.]

"Mr. President, I think the Senator from Connecticut has made a very good argument against his own resolution. If his argument be true, I think it is conclusive that his resolution ought not to be adopted; but there is a misunderstanding, perhaps, between us in relation to the facts. If we are to credit the newspapers, the State of Texas has called a convention, and that convention has passed an ordinance of secession, and submitted it to the people, and it has been ratified, it is stated, by a very large vote. That is the opinion entertained by the Senator from Texas, and it is my opinion about the facts, and probably the opinion of most gentlemen here. If that be true, and that be a valid act, and the State of Texas be no longer one of the United States, clearly my resolution is proper enough, and not the resolution of the Senator. When we decide for any cause of law or fact that a person upon this floor, claiming to be a Senator, is not entitled to a seat here, he is never expelled. How was it when, a few years ago, the Senate decided that a Senator from Iowa, who claimed a seat, was not entitled? Did anybody propose to expel him? Repeatedly the Senate and House of Representatives have decided that those who came here and attempted to act as members of the body were not entitled to seats; but nobody ever thought of expelling them on that ground.

"I need not, I am sure, dilate on this point of view; for I take it for granted the Senator agrees with me that if the State of Texas has in fact ceased to be one of the United States we should simply say so, and declare that she is not longer entitled to be represented. But the Senator argues that this act is invalid. Take it to be true; suppose Texas has no right, no power, to secede, and in fact has not seceded: then the Senator before me [Mr. Wigfall] is entitled to be here as a member of the body, unless you argue that his erroneous opinion upon that fact disqualifies him. Now, let us look at it for a moment. The Senator from Texas thinks that his State has seceded, and that he is no longer a Senator. That is his opinion as a matter of constitutional law. The Senator from Connecticut, on the other side, says that he is mistaken in that point. Well, sir, was it ever pretended that you would expel a Senator for a mistake upon a legal question? I ask Senators all around, was it ever maintained, that because a Senator differed with a majority upon a constitutional question, however important, that was a reason for expelling him from the body? I do not think so. The Senate may overrule him; they may take such action as to show him that in their judgment he is mistaken, and then he may feel bound to conform to their action, and may do so.

"The Senator from Connecticut says that secession is a monstrous idea. I admit that you might expel a Senator, perhaps, for having some monstrous idea, which showed that he was not capable of acting as one of the body. If, for example, a Senator were to entertain the opinion that the moon was made of green cheese, or some other absurdity, we might come to the conclusion that he had not intellect enough to act upon this floor as a Senator, and that therefore he ought to be driven off it; but will anybody pretend that this opinion of my friend from Texas stands in that category? Have not twenty Senators, perhaps, during the past session, declared on this floor that they entertained that very idea? The whole State of Virginia, I believe, "the mother of States and of statesmen," as she is called, almost without division of opinion, has always maintained that position. Without knowing what either of the Senators from Virginia would say, I take it for granted they both agree with the Senator from Texas.

"If it is an error, therefore, on his part, to believe that a State has a right to secede, and you can expel him for that reason, why not expel the Virginia Senators; why not expel the others who have expressed that opinion; and especially, why not expel those gentlemen who have declared it and gone away? Why is it that their names are called from time to time as Senators in this body? They have avowed the same opinion in quite as strong language as my friend from Texas, and they have acted upon it and gone away, and left us sometimes without a quorum, shown an utter defiance and disregard of the opinions which the Senator from Connecticut avows. Why not extend it to them?

"But the Senator alludes to the fact that the State of Texas has taken possession of some of the public property, and perhaps expelled the armies of the United States. Is that a sufficient reason for expelling her representatives here? If that be a good reason, it applies with more force to the other States. I ask that Senator how it is that he allows the name of Jefferson Davis to be called here, and makes no motion to expel him? He claims to be the head of a foreign government. Not only has his State seceded; not only has he advised taking possession of the forts; but he is the commander-in-chief of the army and the president of another republic, and yet he is a "marvelously proper" Senator; there is no motion made to expel him. I should like to know upon what principle it is."

[Thirty-seventh Congress—First session.]

WAITMAN T. WILLEY AND JOHN S. CARLILE, *of Virginia.*

July 13, 1861, the credentials of Mr. Willey, elected to fill the unexpired term ending March 3, 1863, of James M. Mason, expelled, and the credentials of Mr. Carlile, elected to fill the unexpired term ending March 3, 1865, of Robert M. T. Hunter, expelled, were presented. A motion was made that the credentials be referred to the Committee on the Judiciary. The credentials stated that the election had been held July 9, 1861, and that it had been "to fill the vacancy which has happened by the withdrawal and abdication" of the two preceding Senators. The motion to refer the credentials was not agreed to, and, after debate, the oaths were administered. Some Senators maintained that by admitting Messrs. Willey and Carlile to their seats the Senate would be undertaking to recognize a government of the State which was not the regular State government, even though that State government were in a state of rebellion; and that the Senate was bound to recognize the fact that the term of office of the governor who was in rebellion had not expired, and that the credentials were not signed by him, but by another as governor. Others favored reference to a committee on the ground that at the time of the election, July 9, 1861, there was no vacancy in the Senate from Virginia, inasmuch as Messrs. Mason and Hunter had not been expelled until July 12, and that the Senate had recognized them as Senators until that day by its action in expelling them at that time. Extracts from speeches given below will show more at length the grounds upon which Senators proceeded.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 1st sess. 37th Cong., with extracts from remarks by Messrs. Bayard, Saulsbury, and Trumbull.

The debates are found on pages 103-109 of the Congressional Globe, 1st sess. 37th Cong.

SATURDAY, *July* 13, 1861.

Mr. Johnson, of Tennessee, presented the credentials of the Hon. John S. Carlile, elected a Senator by the legislature of the State of Virginia "to fill the vacancy which has happened by the withdrawal and abdication of Robert M. T. Hunter;" which were read.

Mr. Johnson, of Tennessee, presented the credentials of the Hon. Waitman T. Willey, elected a Senator by the legislature of the State of Virginia "to fill the vacancy which has happened by the withdrawal and abdication of James M. Mason;" which were read.

On motion by Mr. Bayard that the credentials of the Hon. Mr. Carlile and the Hon. Mr. Willey be referred to the Committee on the Judiciary, it was determined in the negative—yeas 5, nays 35.

On motion by Mr. Powell, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Bright, Polk, Powell, and Saulsbury.

Those who voted in the negative are Messrs. Anthony, Bingham, Browning, Chandler, Clark, Collamer, Cowan, Dixon, Doolittle, Fessenden, Foot, Foster, Grimes, Harlan, Harris, Howe, Johnson of Tennessee, Kennedy, King, Lane of Indiana, Lane of Kansas, Latham, McDougall, Morrill, Pomeroy, Rice, Sherman, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, Wilmot, and Wilson.

So the motion of Mr. Bayard was not agreed to.

The Vice-President then administered to Mr. Carlile and Mr. Willey the oath prescribed by law, and they took their seats in the Senate.

[Extract from remarks of Mr. Bayard, of Delaware, in support of the motion made by him that the credentials be referred to a committee; taken from page 103 of the Congressional Globe referred to in the head-note.]

"Before the Senate proceeds to swear in these gentlemen, I beg leave to enter my protest. I think these credentials ought to be referred to the Committee on the Judiciary. They involve very grave questions. You are undertaking to recognize a government of the State of Virginia which is not the regular State government, even though that State government may be in what you may call a state of rebellion. You are bound to take notice of the fact that Mr. Letcher is governor of Virginia, and that his term of office, under the constitution and laws of Virginia, has not yet expired. If you say he is in rebellion, that does not authorize a portion of the people of Virginia to form a legislature for the purpose of electing Senators to take seats in this body. You have no authority to create a new State out of a part of an existing State. I think the questions are very grave.

"Of course, I know very well that you have the commanding majority in this House;

but I think you had better pause and have an investigation before you undertake to swear in members under such an authority. I make the motion, before swearing in either of these gentlemen, that the credentials be referred to the Committee on the Judiciary. I have no personal feeling of any kind about this matter, but it seems to me to be a grave violation of the Constitution of the United States, and I must enter my protest against it. I make the motion that the credentials be referred to the Committee on the Judiciary."

[Extract from remarks of Mr. Saulsbury, of Delaware, in support of the motion offered by Mr. Bayard that the credentials be referred to a committee; taken from page 104 of the Congressional Globe referred to in the head-note.]

"It is a matter of indifference to me, sir, what disposition is made of the credentials of the proposed Senators from Virginia; but I wish to call the attention of the Senate to one fact, which, in my mind, shows the propriety of the motion now made. These credentials, as read by the Secretary, state that on the 9th day of July the legislature of the State of Virginia, owing to the abdication of Mr. Mason and Mr. Hunter, elected these gentlemen to seats upon this floor. No longer ago, however, sir, than yesterday, this body treated Mr. Mason and Mr. Hunter as members of the Senate of the United States. Yesterday you expelled those gentlemen from seats upon the floor of this Senate as members of the Senate. Then, at the time of this election by the new government of Virginia, there was no vacancy in the Senate of the United States from that State, according to the judgment of the American Senate. Yesterday morning, when you met, according to the judgment of a majority of the members here Mr. Mason and Mr. Hunter were members of this body. You treated them as members of this body; you exercised your power of expulsion upon them. Could you have expelled them, as members of the Senate, from seats on this floor, if they were not at the time of the vote, in your judgment, actually members of this body? If they were yesterday morning members of the Senate of the United States—and you have treated them as such, and expelled them—can you now allow these gentlemen to be sworn in as Senators from the State of Virginia when the credentials presented here show on their face that they were elected not to fill any vacancy; when the facts, as you have decided them, show that there was no vacancy in the Senate? For that reason, and for none other, I think the credentials should go to the Committee on the Judiciary."

[Extract from remarks of Mr. Trumbull, of Illinois, in opposition to the motion made by Mr. Bayard that the credentials be referred to a committee; taken from page 104 of the Congressional Globe referred to in the head-note.]

"Mr. President, I think that we should not "stick in the bark" as to dates here. I presume the Senator from Delaware was elected before the vacancy which he filled existed. There is scarcely a Senator here that was not elected in advance, before the office became vacant. I recollect well that the Senators from Minnesota were admitted to seats upon this floor who were elected long before the State of Minnesota was a member of the Union. Nearly every new State which has come into the Union has elected her Senators before the State was admitted.

Now, let me put a case. A few years ago this country was engaged in a war with Mexico. Suppose that one of the Senators from Delaware, instead of being loyal and true to his country, had turned traitor and joined the Mexican army and fought against the United States, and the legislature of Delaware had been in session, knowing the fact that one of their Senators in this body was fighting against this country in the armies of its enemies: must the legislature of Delaware wait till the Congress of the United States assembles, and the Senate, by a formal resolution, expels that Senator? Would not the legislature of Delaware proceed at once to elect a Senator, and when Congress did convene, and a resolution was offered to expel the traitor to his country, would it be said, because the State of Delaware acted before Congress had convened and expelled the traitor, that therefore the other election should go for nothing, and that her legislature must be convened and a new election held?

"Sir, the guilt and the turpitude of the men who once sat as Senators here is far greater than it would have been in the case I have supposed. They have joined in a fratricidal war against their country. They have not joined a foreign enemy, but they have undertaken to stir up a domestic war. I do not think there is any necessity for their waiting till the formal resolution of expulsion was passed here. Why, sir, these credentials recite the fact that the former Senators have withdrawn and abdicated; and when the expulsion takes place, it may well have reference to the time of their withdrawal and abdication.

"Now, sir, we have the credentials here fair on their face. They purport to be the credentials of Senators elected by the old Commonwealth of Virginia, sent by a person purporting to be the governor of Virginia, and under the great seal of the State. This

appears to be fair. But Senators say, "Oh, well; but we know this is not the legislature of Virginia; there is another legislature, and there is another man who is governor." Well, if you are going outside of these credentials to rely on the knowledge which you have of the condition of things in the State of Virginia, then you know that the old governor of Virginia and the old legislature are in rebellion against the country. They are rebels and traitors in arms against the Government, and are not to be recognized as the government of Virginia, but are to be recognized as enemies and traitors, whom the whole power of this Government is now put forth to subdue and bring into obedience to the Constitution and the laws; and I would to God that the power was used to bring them to obedience.

"Now, sir, as I said, I am not for "sticking in the bark" about this matter. Let us take the condition of things as it is. Here is the State of Virginia in rebellion. If you are going outside to inquire after the fact, you will ascertain that a portion of the people of that State have risen in arms against the Government; another portion of the people of that State are loyal to the Union; and the loyal men of Virginia have elected a legislature and seek representation in the Congress of the United States. They are entitled to representation here, and the enemies of the country are not.

"I think there is no necessity for referring this matter to the committee, unless there are some facts to be inquired into. On its face this purports to be an election of Senators from the Commonwealth of Virginia. There is no objection to the form of it, and I do not know that any fact has been suggested by the Senator from Delaware that is to be inquired into. What fact does he propose to inquire into? If he goes to his general knowledge, is he not satisfied that what was the old legislature of Virginia and its former governor are now in rebellion against the Government? And will he recognize them as having any authority to send Senators here? I presume not. And if Virginia is in the Union, her loyal men and not her traitors have a right to be represented here. I trust, sir, that the Senators will be sworn in."

[Thirty-seventh Congress—First and second sessions.]

FREDERIC P. STANTON vs. JAMES H. LANE,

of Kansas.

The credentials of Mr. Lane, one of two first Senators elected by the legislature of Kansas in April, 1861, were presented July 4, 1861, and he took his seat. July 12, 1861, a paper purporting to be the credentials of Mr. Stanton, appointed a Senator by the governor to the seat held by Mr. Lane, was presented, and referred to the Committee on the Judiciary. August 2, 1861, the committtee reported that Mr. Lane "was, by the Executive, appointed a brigadier-general in the volunteer forces of the United States on the 20th of June, 1861; that he accepted said appointment, and was legally qualified to perform its duties." In the opinion of the committee the office of brigadier-general under the United States is incompatible with that of member of either House of Congress. By accepting the office of brigadier-general, the sitting member, Mr. Lane, virtually resigned his seat in the Senate, and it became vacant at that time. On the 8th day of July, 1861, the governor of Kansas gave to the contestant, Mr. Stanton, a commission in due form appointing him a Senator of the United States from the State of Kansas to fill the aforesaid vacancy, and by virtue of that commission Mr. Stanton now claims his seat. Your committee recommend the adoption of the following resolutions: "1. *Resolved*, That James H. Lane is not entitled to a seat in this body. 2. *Resolved*, That Frederic P. Stanton is entitled to a seat in this body." No action was taken on the report or resolutions during this session of Congress. December 18, 1861, in the next session of Congress, the report was recommitted to the committee. The committee reported the same without amendment January 6, 1862. January 16, 1862, the first resolution was amended by striking out the word "not," and it was "*Resolved*, That James H. Lane is entitled to a seat in this body;" and the second resolution was indefinitely postponed. Of those voting in favor of Mr. Lane's title to the seat some proceeded upon the ground that on the 20th of June, 1861, the office of brigadier-general did not exist, and consequently that Mr. Lane was not a "person holding any office;" others upon the ground that although he held an office after he had been elected Senator, yet, having resigned the same before taking his seat in the Senate, he did not come within the provision of section 6 of the first article of the Constitution.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 1st and 2d sess. 37th Cong., with the report of the committee from Senate Reports, 1st sess. 37th Cong., No. 1.

The documents relating to the case are Ex. Doc. No. 8 and Mis. Doc. No. 11, from Senate Executive and Miscellaneous Documents, 1st sess. 37th Cong.

Special references to the debates of each day are inserted below.

THURSDAY, *July* 4, 1861.

Mr. Grimes presented the credentials of the Hon. James Henry Lane, elected a Senator by the legislature of the State of Kansas.

The credentials were read, and the oath prescribed by law was administered to Mr. Lane.

FRIDAY, *July* 12, 1861.

Mr. Foot presented a paper purporting to be the credentials of the Hon. Frederic P. Stanton, appointed a Senator by the governor of the State of Kansas; which was referred to the Committee on the Judiciary.

Mr. Foot presented a memorial of Frederic P. Stanton, asking admission as a member of the Senate of the United States; which was referred to the Committee on the Judiciary.

[A brief statement by Mr. Lane is found on page 82 of the Congressional Globe, 1st sess. 37th Cong.]

TUESDAY, *July* 16, 1861.

Mr. Lane, of Kansas, presented a letter from the chief clerk of the War Department inclosing a copy of the appointment of F. P. Stanton as special agent to Kansas and New Mexico; which was referred to the Committee on the Judiciary.

WEDNESDAY, *July* 31, 1861.

Mr. Lane, of Indiana, submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the President of the United States be requested to inform the Senate whether the Hon. James H. Lane, a member of this body from Kansas, has been appointed a brigadier-general in the Army of the United States; and, if so, whether he has accepted such appointment."

FRIDAY, *August* 2, 1861.

Mr. Foster, from the Committee on the Judiciary, to whom were referred the credentials and the memorial of Frederic P. Stanton, claiming to be entitled to a seat in the United States Senate, under an appointment of the governor of Kansas, in the place of

the Hon. James H. Lane, submitted a report (No. 1), accompanied by the following resolutions:

"*Resolved*, That James H. Lane is not entitled to a seat in this body.

"*Resolved*, That Frederic P. Stanton is entitled to a seat in this body."

On motion by Mr. Foster,

Ordered, That the report be printed.

[Remarks in regard to recommitting the report for the purpose of having printed with it the President's reply to the resolution of July 31, given above, are found on pages 406, 407 of the Congressional Globe, 1st sess. 37th Cong.]

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Trumbull (chairman), Foster, Ten Eyck, Cowan, Harris, Bayard, and Powell.]

IN THE SENATE OF THE UNITED STATES.

AUGUST 2, 1861.—Ordered to be printed.

Mr. Foster made the following report:

The Committee on the Judiciary, to whom were referred the credentials and the memorial of Frederic P. Stanton, of the State of Kansas, asking admission to a seat in this body in place of the Hon. James H. Lane, now holding said seat, having had the same under consideration, report:

That the contestant and sitting member have appeared before them and submitted, severally, their statements and made their exhibits.

The committee find the following facts: That the sitting member, the Hon. James H. Lane, was, by the Executive, appointed a brigadier-general in the volunteer forces of the United States on the 20th of June, 1861; that he accepted said appointment, and was legally qualified to perform its duties.

In the opinion of the committee the office of brigadier-general under the United States is incompatible with that of member of either House of Congress. By accepting the office of brigadier-general, the sitting member, Mr. Lane, virtually resigned his seat in the Senate, and it became vacant at that time.

On the 8th day of July, 1861, the governor of Kansas gave to the contestant, Mr. Stanton, a commission in due form appointing him a Senator of the United States from the State of Kansas to fill the aforesaid vacancy, and by virtue of that commission Mr. Stanton now claims his seat.

Your committee recommend the adoption of the following resolutions:

1. *Resolved*, That James H. Lane is not entitled to a seat in this body.
2. *Resolved*, That Frederic P. Stanton is entitled to a seat in this body.

The evidence from which your committee find the facts herein set forth is, substantially, the following:

WAR DEPARTMENT, *July* 15, 1861.

SIR: In reply to your inquiry in regard to the appointment of the Hon. James H. Lane as brigadier-general, I herewith transmit you documents upon the case:

A. Copy of letter to Secretary of War from Adjutant-General Thomas.
B. Form of appointment (printed blank).
C. Telegram of assistant adjutant-general to commanding officer at Fort Leavenworth.
D. Letter of acceptance of regiments.

The Secretary of War directs me to state that he himself, after having signed the commission of Hon. James H. Lane as brigadier-general, handed it personally to him in presence of the Adjutant-General at the War Department.

Respectfully,

JAMES LESLEY, JR.,
Chief Clerk, War Department.

Hon. F. P. STANTON.

A.

ADJUTANT-GENERAL'S OFFICE,
Washington, July 15, 1861.

SIR: In reply to the inquiry of the Hon. F. P. Stanton of the 13th instant, referred by you to this office, I respectfully state that on the 20th ultimo you directed an appointment as brigadier-general of the three years' volunteers to be made for the Hon.

James H. Lane, of Kansas. The appointment was made as directed, and handed to you for signature, but was not returned to this office for record.

I inclose herewith a blank letter of appointment, similar to the one used in his case.

I have the honor to be, sir, very respectfully, your obedient servant,

L. THOMAS,
Adjutant-General.

Hon. SIMON CAMERON,
Secretary of War.

—

B.

WAR DEPARTMENT,
Washington, June 20, 1861.

SIR: You are hereby informed that the President of the United States has appointed you brigadier-general of the volunteer force raised in conformity with the President's proclamation of May 3, 1861, in the service of the United States, to rank as such from 17th day of May, 1861. Should the Senate, at their next session, advise and consent thereto, you will be commissioned accordingly.

Immediately on receipt hereof, please to communicate to this Department, through the Adjutant-General's Office, your acceptance or non-acceptance of said appointment; and, with your letter of acceptance, return to the Adjutant-General of the Army the oath, herewith inclosed, properly filled up, subscribed, and attested, reporting at the same time your age, residence, when appointed, and the State in which you were born.

Should you accept you will at once report by letter for orders to Secretary of War.

Brig. Gen. JAMES H. LANE,
United States Volunteers.

The original of which this purports to be a copy was not produced before the committee. General Lane stated that it was in the hands of Colonel Weer, at Leavenworth. General Lane also stated that there was a variation, in some respects, between this copy and the original, but no variation was specified which the committee deemed material.

—

C.

[By telegraph.]

ADJUTANT-GENERAL'S OFFICE,
Washington, D. C., July 10, 1861.

Detail an officer to muster in General Lane's brigade. The companies will be mustered when presented, even though less than the standard, and will be filled up afterwards.

By order:

GEORGE D. RUGGLES,
Assistant Adjutant-General.

COMMANDING OFFICER *Fort Leavenworth, Kansas,*
Leavenworth City, Kans.

Official copy.

L. THOMAS,
Adjutant-General.

ADJUTANT-GENERAL'S OFFICE, *July* 16, 1861.

The above order was given at the request of General Lane.

L. THOMAS,
Adjutant-General.

ADJUTANT-GENERAL'S OFFICE, *July* 16, 1861.

—

D.

WAR DEPARTMENT, *June* 20, 1861.

DEAR SIR: This Department will accept two regiments, for three years or during the war, in addition to the three regiments the Department has already accepted from the governor of Kansas, to be raised and organized by you in Kansas. Orders will be given

to muster the same into service immediately on being ready to be so mustered; and on being mustered the requisite arms, &c., will be furnished on the requisition of the mustering officer, who is hereby authorized to make the same.

By order of the President.

SIMON CAMERON,
Secretary of War.

General JAMES H. LANE.

Official copy.

J. LESLEY, JR.,
Chief Clerk.

I, John D. Clark, justice of the peace in and for Washington County, District of Columbia, do hereby certify that on or about the 20th day of June last General James H. Lane swore to and subscribed the form of the within oath before me, which I duly certified and delivered to him.

Given under my hand this 15th July, 1861.

JOHN D. CLARK, *J. P.*

By request of Mr. Stanton.

I, James H. Lane, appointed a brigadier-general in the Army of the United States, do solemnly swear, or affirm, that I will bear true allegiance to the United States of America; and that I will serve them honestly and faithfully against all their enemies or opposers whatsoever, and observe and obey the orders of the President of the United States and the orders of the officers appointed over me, according to the rules and articles for the government of the armies of the United States.

Sworn to and subscribed before me, at ——, this —— day of ——, 186–.

——, ——,
Justice of the Peace.

The following article appeared in the Daily Times, of Leavenworth, on the 26th of June last:

LEAVENWORTH, *June* 25, 1861.

Mr. EDITOR: On the 20th instant I was duly appointed a brigadier-general in the volunteer force of the United States, and thereupon received the following order:

WAR DEPARTMENT, *June* 20, 1861.

DEAR SIR: This Department will accept two regiments for three years or during the war, in addition to the three regiments the Department has already accepted from the governor of Kansas, to be raised and organized by you in Kansas. Orders will be given to muster the same into service immediately on being ready to be so mustered; and on being mustered the requisite arms, &c., will be furnished on the requisition of the mustering officer, who is hereby authorized to make the same.

By order of the President.

SIMON CAMERON,
Secretary of War.

General JAMES H. LANE.

Fellow-citizens of Kansas and adjoining States and Territories:

The important trust thus confided to me has occurred at a momentous period in our history as a nation. An insurrectionary war, commenced by rebels, in defiance of patriotism and duty, has now approached our border. Treason has raised its bloody hand almost in our very midst to strike down our glorious flag made blessed by the memories of our fathers. The horrors of war are no longer far removed from us, but have been brought by traitorous hands to our very hearthstones. Impressed with the necessity of prompt and vigorous action in defense of our country, its flag, and our homes, the President has authorized the formation of a brigade of five regiments in Kansas. He has been pleased to place in my hands the honor of leading the gallant sons of the youngest State of the Union to victory in defence of that Union of which it has so lately become a part. Treason and rebellion surround us. Loyal American citizens driven from their homes are crying to us for protection. The best Government in the world is assailed by wicked hands. Men of Kansas and the surrounding country, in the name of all we hold sacred, and by the authority of our constitutional ruler, I invoke you to rally to the Stars and Stripes; come forward and join the regiments accepted from our State.

When organized, the watchword of the brigade will be the downfall of treason wherever found and the upholding of Union men in every State and place.

JAMES H. LANE,
Brigadier-General.

General Lane stated to the committee that he wrote the body of the address only, and did not affix his name as brigadier-general.

The requisitions mentioned in the following letter of General Meigs were read before the committee by General Lane; he stated that he made them but did not sign them as brigadier-general, nor was that title annexed to his name. The requisitions not being in possession of the committee are not inserted in this report.

QUARTERMASTER-GENERAL'S OFFICE,
Washington City, June 26, 1861.

SIR: I am informed that you are able and willing to supply the regulation uniforms for two regiments, including four companies of cavalry, four companies of mounted artillery, and twelve companies of infantry, subject to regulation, inspection as to work and material, and at the United States prices.

This clothing is for two regiments to be raised and commanded by General Lane, of Kansas, and must be delivered in time to reach Fort Leavenworth before the 20th July, at which time the regiment is to take the field.

I inclose General Lane's requisitions, three in number, specifying the articles and indorsed by me for identification. Also a copy of order No. 23, of November 30, 1859, fixing prices.

Be good enough to signify by telegraph your acceptance or rejection of this order, and if rejected return the requisitions by bearer.

When ready for inspection a United States inspector will be sent to Boston to look at them.

M. C. MEIGS,
Quartermaster-General.

Messrs. HAUGHTON, SAWYER & Co.,
Boston, Mass.

The above is a true copy.

M. C. MEIGS,
Quartermaster-General.

MONDAY, *August* 5, 1861.

Mr. Lane, of Kansas, presented papers relative to his appointment as a brigadier-general of volunteers, and his acceptance of the said appointment.

Ordered, That they lie on the table and be printed.

* * * * * * *

Mr. Foster rose to a question of privilege, and moved that the Senate proceed to the consideration of the report of the Committee on the Judiciary on the credentials of Frederic P. Stanton, claiming to be a Senator of the State of Kansas, under an appointment of the governor of the State, in the place of the Hon. James H. Lane; and

On the question to agree to the motion of Mr. Foster, it was determined in the negative—yeas 17, nays 21.

On motion by Mr. Foster, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Breckinridge, Carlile, Cowan, Doolittle, Foot, Foster, Grimes, Harris, Johnson of Tennessee, King, Pearce, Powell, Simmons, Ten Eyck, Trumbull, and Wade.

Those who voted in the negative are Messrs. Baker, Bingham, Bright, Browning, Chandler, Clark, Dixon, Fessenden, Hale, Harlan, Howe, Lane of Indiana, Latham, Polk, Rice, Saulsbury, Sherman, Sumner, Wilkinson, Wilmot, and Wilson.

So the motion of Mr. Foster was not agreed to.

[The debate is found on pages 438–441 of the Congressional Globe, 1st sess. 37th Cong.]

TUESDAY, *August* 6, 1861.

The following message was received from the President of the United States by Mr. Nicolay, his secretary:

To the Senate of the United States:

In answer to the resolution of your honorable body of date July 31, 1861, requesting the President to inform the Senate whether the Hon. James H. Lane, a member of that

body from Kansas, has been appointed a brigadier-general in the Army of the Unite States, and if so, whether he has accepted such appointment, I have the honor to trans mit herewith certain papers, numbered 1, 2, 3, 4, 5, 6, and 7, which, taken together explain themselves; and which contain all the information I possess upon the question propounded.

It was my intention, as shown by my letter of June 20, 1861, to appoint Hon. Jame H. Lane, of Kansas, a brigadier-general of United States volunteers, in anticipation o the act of Congress, since passed, for raising such volunteers; and I have no furthe knowledge upon the subject except as derived from the papers herewith inclosed.

ABRAHAM LINCOLN.

EXECUTIVE MANSION, *August* 5, 1861.

* * * * * * *

Mr. Trumbull submitted the following resolution; which was considered by unani mous consent, and agreed to:

"*Resolved*, That the President be requested to communicate to the Senate, at its nex session, copies of any order under which General James H. Lane is authorized to rais troops for the war; also of all requisitions made by the said Lane, and of all orders give by the War Department at his instance for horses, arms, clothing, subsistence, and fo mustering into service the troops composing the brigade known as General Lane's brigad in Kansas."

[Brief remarks in regard to the printing of the President's message are found on pag 450–452 of the Congressional Globe, 1st sess. 37th Cong.]

[Second session of the Thirty-seventh Congress.]

WEDNESDAY, *December* 11, 1861.

On motion by Mr. Foster, the Senate proceeded to consider the resolutions reporte from the Committee on the Judiciary, on the 2d of August last, on the application o the Hon. Frederic P. Stanton for admission to a seat in the Senate as a Senator from the State of Kansas, under an appointment from the governor, in the place of the Hon. James H. Lane; and

On motion by Mr. Foster,

Ordered, That the resolutions lie on the table.

TUESDAY, *December* 17, 1861.

The Senate resumed the consideration of the resolutions reported from the Committee on the Judiciary, declaring Frederic P. Stanton to be entitled to the seat in the Senate now occupied by the Hon. James H Lane; and

On motion by Mr. Lane, of Kansas,

Ordered, That the further consideration thereof be postponed to to-morrow at 1 o'clock.

WEDNESDAY, *December* 18, 1861.

On motion by Mr. Foster, the Senate resumed the consideration of the resolutions reported from the Committee on the Judiciary affirming the right of Frederic P. Stanton to the seat in the Senate now occupied by the Hon. James H. Lane; and

After debate,

On motion by Mr. Collamer that the resolutions and the report of the committee be recommitted to the Committee on the Judiciary, it was determined in the affirmative—yeas 26, nays 9.

On motion by Mr. Foster, the yeas and nays being desired by one-fifth of the Senator present,

Those who voted in the affirmative are Messrs. Bright, Browning, Carlile, Chandler, Clark, Collamer, Cowan, Fessenden, Foot, Grimes, Hale, Harlan, Harris, Howe, King, Lane of Indiana, Latham, Morrill, Pearce, Pomeroy, Saulsbury, Sherman, Sumner, Wade, Willey, and Wilson.

Those who voted in the negative are Messrs. Bayard, Dixon, Doolittle, Foster, Johnson of Tennessee, Nesmith, Simmons, Ten Eyck, and Trumbull.

So it was

Ordered, That the resolutions and the report of the committee be recommitted to the Committee on the Judiciary.

[The debate on the motion to recommit is found on pages 127–130 of the Congressional Globe, part 1, 2d sess. 37th Cong.]

MONDAY, *January* 6, 1862.

Mr. Foster, from the Committee on the Judiciary, to whom was recommitted the report of the Committee on the Judiciary on the credentials of the Hon. Frederic P Stanton, claiming to be entitled to the seat in the Senate now occupied by the Hon

James H Lane, reported the same without amendment, and with a recommendation that the Senate do adopt the following resolutions:

Resolved, That James H. Lane is not entitled to a seat in this body.

Resolved, That Frederic P. Stanton is entitled to a seat in this body.

TUESDAY, *January* 7, 1862.

On motion by Mr. Foster, the Senate resumed the consideration of the resolutions reported from the Committee on the Judiciary, declaring Frederic P. Stanton entitled to the seat in the Senate now held by the Hon. James H. Lane as a Senator from the State of Kansas; and

On motion by Mr. Kennedy, the Senate adjourned.

WEDNESDAY, *January* 8, 1862.

The Senate resumed the consideration of the resolutions reported from the Committee on the Judiciary, declaring Frederic P. Stanton entitled to the seat in the Senate now held by the Hon. James H. Lane as a Senator from the State of Kansas; and

After debate,

On motion by Mr. Grimes,

Ordered, That the further consideration thereof be postponed to to-morrow.

[The debate is found on pages 222-227 of the Congressional Globe, part 1, 2d sess. 37th Cong.]

MONDAY, *January* 13, 1862.

The Senate resumed the consideration of the resolutions reported from the Committee on the Judiciary, declaring Frederic P. Stanton entitled to the seat now held by the Hon. James H. Lane as a Senator from the State of Kansas.

On motion by Mr. Collamer that Frederic P. Stanton, who contests the seat of the Hon. James H. Lane, have leave to be heard in person at the bar of the Senate, it was determined in the affirmative—yeas 32, nays 4.

On motion by Mr. Fessenden, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Bright, Browning, Carlile, Chandler, Clark, Collamer, Davis, Doolittle, Fessenden, Foot, Foster, Grimes, Harlan, Harris, Howe, Johnson, King, Lane of Indiana, Lane of Kansas, Latham, McDougall, Morrill, Nesmith, Pearce, Pomeroy, Powell, Simmons, Ten Eyck, Trumbull, Wade, and Wilson.

Those who voted in the negative are Messrs. Dixon, Hale, Sumner, and Wilkinson.

So it was

Ordered, That Frederic P. Stanton, who contests the seat of the Hon. James H. Lane, have leave to be heard in person at the bar of the Senate.

On motion by Mr. Fessenden that the Senate reconsider the vote agreeing to the motion of Mr. Collamer, it was determined in the negative.

On motion by Mr. Clark to amend the first resolution reported by the committee by striking out the word "not,"

After debate, and the consideration of executive business,

On motion by Mr. Pearce, the Senate adjourned.

[The debate is found on pages 290-297 of the Congressional Globe, part 1, 2d sess. 37th Cong.]

WEDNESDAY, *January* 15, 1862.

The Senate resumed the consideration of the resolution reported from the Committee on the Judiciary, declaring Frederic P. Stanton entitled to the seat now held by the Hon. James H. Lane as a Senator from the State of Kansas; and

The amendment proposed by Mr. Clark to the first resolution, viz, strike out the word "not," being under consideration,

After debate, and the consideration of executive business,

On motion by Mr. Hale, the Senate adjourned.

[The debate is found on pages 336-344 of the Congressional Globe, part 1, 2d sess. 37th Cong.]

THURSDAY, *January* 16, 1862.

The Vice-President announced that the hour of 1 o'clock having arrived, it was the duty of the Chair to call up the unfinished business of the Senate of yesterday, which was the resolutions reported from the Committee on the Judiciary, declaring Frederic P. Stanton entitled to the seat in the Senate now held by the Hon. James H. Lane as a Senator from the State of Kansas; and the Senate resumed the consideration of the said resolutions.

On the question to agree to the amendment proposed by Mr. Clark to the first resolution, viz, strike out the word "not,"

After debate, it was determined *in the affirmative*—yeas 24, nays 16.

On motion by Mr. Clark, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bright, Browning, Chandler, Clark, Collamer, Cowan, Doolittle, Fessenden, Hale, Harlan, Harris, Howe, King, Lane of Indiana, Latham, Morrill, Pomeroy, Rice, Sherman, Sumner, Trumbull, Wilkinson, Wilmot, and Wilson.

Those who voted in the negative are Messrs. Anthony, Bayard, Carlile, Davis, Dixon, Foot, Foster, Johnson, Kennedy, McDougall, Nesmith, Pearce, Powell, Saulsbury, Ten Eyck, and Wade.

So the amendment was agreed to.

On the question to agree to the resolution as amended, it was determined in the affirmative.

So it was

Resolved, That James H. Lane is entitled to a seat in this body.

On the question to agree to the second resolution reported by the committee,

On motion by Mr. Hale,

Ordered, That the further consideration of the resolution be postponed indefinitely.

COMPENSATION OF MR. STANTON.

[First session of the Thirty-seventh Congress.]

TUESDAY, *August* 6, 1861.

Mr. Dixon submitted the following resolution; which was considered by unanimous consent and agreed to:

"*Resolved*, That the usual mileage and pay be allowed and paid to Frederic P. Stanton while contesting his right to a seat in the Senate from the State of Kansas."

[Second session of the Thirty-seventh Congress.]

THURSDAY, *January* 16, 1862.

Mr. Dixon submitted the following resolution; which was considered by unanimous consent, and referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

"*Resolved*, That the usual compensation and mileage of a Senator be allowed to Frederic P. Stanton up to the time of the termination of his contest for a seat in the Senate as a Senator for the present Congress, to be paid out of the contingent fund."

[The debate is found on pages 359–364 of the Congressional Globe, part 1, 2d sess. 37th Cong.]

FRIDAY, *January* 17, 1862.

Mr. Dixon, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the resolution allowing the usual pay and mileage of a Senator to Frederic P. Stanton during the time he was contesting the seat of the Hon James H. Lane, reported it without amendment.

The Senate proceeded to consider the said resolution, as in Committee of the Whole and having been amended on the motion of Mr. Fessenden, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read a third time, as follows:

"*Resolved*, That the usual compensation, exclusive of mileage which he has already received, of a Senator be allowed to Frederic P. Stanton up to the termination of his contest for a seat in the Senate as a Senator for the present Congress, to be paid out of the contingent fund;"

And on the question, Shall the resolution pass? it was determined in the affirmative

* * * * * * *

On motion by Mr. Fessenden that the Senate reconsider the vote on the passage of the resolution allowing pay and mileage to Frederic P. Stanton, it was determined in the affirmative.

The question recurring upon the passage of the resolution, and the same having been amended on the motion of Mr. Fessenden, by striking out the words "which he has already received," it was agreed to, as follows:

"*Resolved*, That the usual compensation, exclusive of mileage, of a Senator be allowed to Frederic P. Stanton up to the time of the termination of his contest for a seat in the Senate as a Senator for the present Congress, to be paid out of the contingent fund."

[The debate is found on pages 376–379 of the Congressional Globe, part 1, 2d sess. 37th Cong.]

[Thirty-seventh Congress—Second session.]

TRUSTEN POLK,

Senator from Missouri from March 4, 1857, *till January* 10, 1862.

December 18, 1861, the following resolution was submitted, and referred to the Committee on the Judiciary: "*Resolved*, That Trusten Polk, of Missouri, now a traitor to the United States, be expelled and he hereby is expelled from the Senate." January 9, 1862, the committee reported that it appeared to their satisfaction that Trusten Polk had, in a letter transmitting pecuniary means to aid in the publication of a secession newspaper in Missouri, declared among other disloyal and treasonable expressions that "dissolution is now a fact," and that he hoped Missouri would not "hesitate a moment to go with her Southern sisters;" that this letter had been extensively published, and could hardly have failed to come to the notice of Senator Polk; yet that neither he nor any one in his behalf had appeared before the committee to deny the authenticity of the letter, or attempted in any way to explain it; that he had not only failed to appear in his seat during the session, but on the contrary, as the committee are fully satisfied, had left his home in Saint Louis, and had gone clandestinely within the lines of the enemy then in rebellion against the United States. They reported back the resolution with the unanimous recommendation that it pass. January 10 it passed by a vote of 36 yeas to no nays. A few remarks in regard to Mr. Polk's letter, and reference of the resolution, constitute the debate on the case.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to the case from Senate Journals, 2d sess. 37th Cong., with the report of the committee from Senate Reports, 2d sess., 37th Cong., No. 4.

The debate is found on page 126 of the Congressional Globe, part 1, 2d sess. 37th Cong.

WEDNESDAY, *December* 18, 1861.

Mr. Sumner submitted the following resolution; which was considered by unanimous consent, and referred to the Committee on the Judiciary:

"*Resolved*, That Trusten Polk, of Missouri, now a traitor to the United States, be expelled, and he hereby is expelled, from the Senate."

THURSDAY, *January* 9, 1862.

Mr. Ten Eyck, from the Committee on the Jndiciary, to whom was referred a resolution for the expulsion of Trusten Polk, a Senator from the State of Missouri, reported the resolution without amendment, and with a recommendation that the resolution do pass.

Mr. Ten Eyck submitted a report (No. 4) on the subject; which was ordered to be printed.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Trumbull (chairman), Foster, Ten Eyck, Cowan, Harris, Bayard, and Powell.]

IN THE SENATE OF THE UNITED STATES.

JANUARY 9, 1862.—Submitted, and ordered to be printed.

Mr. Ten Eyck made the following report:

The Committee on the Judiciary, to whom was referred the resolution of the Senate for the expulsion of Trusten Polk, a Senator from the State of Missouri, report:

That it appears to the satisfaction of the committee that Trusten Polk recently and since the commencement of the present rebellion, in a letter transmitting pecuniary means to aid in the publication of a secession newspaper in Southwestern Missouri, among other disloyal and treasonable expressions used the following: "Dissolution is now a fact; not only a fact accomplished, but thrice repeated. Everything here looks like inevitable and final dissolution. Will Missouri hesitate a moment to go with her Southern sisters? I hope not. Please let me hear from you. I would be glad to keep posted as to the condition of things in Southwest Missouri. I like Governor Jackson's position. It looks like adherence to the 'Jackson resolutions.'"

That a copy of this letter was published in full in the Congressional Globe of the 19th of December last, the day after the resolution of expulsion in this case was introduced in the Senate, and has also, both before and since that time, been published and referred to in several other newspapers in Missouri and elsewhere, and widely circulated throughout the country, which publication could hardly have failed to come to the notice of Senator Polk; and yet neither he nor any other person in his behalf has ap-

peared before the committee to deny the authenticity of the letter referred to, or att in any other way to deny or explain it so far as the committee are aware; a co conduct deemed to be wholly incompatible with the idea of his innocence, si innocent man in his position, according to the first impulses of a true and loyal would not have suffered a moment to elapse without flying to his place to deny, i so grave and foul a charge.

That besides this he has not only failed to appear in his seat during the whole the continuance of the present session, now a period of six weeks, to perform h to his State and to the Union on an occasion of the greatest possible urgency, wl votes as well as counsel of every true and loyal Senator were eminently needed viding for the public welfare and in putting down a fierce rebellion threateni very existence of the Union, but, on the contrary, as the committee are fully sati information derived from reliable official and other sources in Missouri, has left hi in Saint Louis and gone clandestinely within the lines of the enemy now in open. rebellion against the United States, whose Constitution he, as Senator, has so sworn to support.

The committee, under this state of facts, are of opinion that justice to the Se rid its roll of his name as well as the Chamber of his presence; justice to the S Missouri, whose high commission he has dishonored, and justice to the Union wl has sought to betray, all require that he should no longer continue a member body.

They therefore respectfully report the resolution for the expulsion of Trusten Senator from Missouri, back to the Senate, with the unanimous recommendatic the same do pass.

FRIDAY, *January* 10, 1

On motion by Mr. Ten Eyck, the Senate proceeded to consider the resoluti mitted by Mr. Sumner the 18th of December, expelling from the Senate Truste a Senator from the State of Missouri; and

On the question to agree to the resolution, as follows:

"*Resolved*, That Trusten Polk, of Missouri, now a traitor to the United St expelled, and he hereby is expelled, from the Senate,"

It was determined in the affirmative—yeas 36, nays none.

Those who voted in the affirmative are Messrs. Anthony, Bright, Browning, Chandler, Collamer, Cowan, Davis, Dixon, Fessenden, Foster, Grimes, Hale, Harris, Howe, Johnson, King, Lane of Indiana, Lane of Kansas, Latham, Nesmith, Pomeroy, Powell, Rice, Saulsbury, Sherman, Simmons, Sumner, Ten Thompson, Trumbull, Wade, Wilkinson, and Wilson.

So the resolution was agreed to, two-thirds of the Senators present having voted affirmative.

Mr. Trumbull submitted the following motion; which was considered by una consent, and agreed to:

Ordered, That the Vice-President be requested to transmit to the governor of th of Missouri copies of the resolutions expelling Waldo P. Johnson and Trusten Pol the Senate, attested by the Secretary of the Senate.

[Thirty-seventh Congress—Second session.]

WALDO P. JOHNSON,

Senator from Missouri from March 4, 1861, *till January* 10, 1862.

December 10, 1861, a resolution was submitted that Mr. Johnson be expelled from the Senate for his sympathy with and participation in the rebellion, conduct incompatible with his duty and station as a Senator. December 12 the resolution was referred to the Committee on the Judiciary, with instructions to inquire into the facts. January 9, 1862, the committee reported that previous to his election Mr. Johnson was known, in Missouri, as entertaining secession proclivities; that since his election he was reported to have made a speech evincing a spirit hostile to the Government; that he had not appeared in his seat in the Senate since the session began; that this failure to appear in his place, and his silence under the imputations upon his loyalty, which, from their publicity, could not have escaped his notice if within a loyal portion of the Union, of themselves furnish strong presumptive grounds against his fidelity to the Government. They reported back the resolution with the recommendation that it pass. January 10 it passed by a vote of 35 yeas to no nays. A few remarks, mainly on the question of reference of the resolution, constitute the only debate on the case.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journal, 2d sess. 37th Cong., with the report of the committee from Senate Reports, 2d sess., 37th Cong. No. 5.

The debate is found on pages 70, 71 of the Congressional Globe, part 1, 2d sess. 37th Cong.

TUESDAY, *December* 10, 1861.

Mr. Foot submitted the following resolution for consideration:

"*Resolved*, That Waldo P. Johnson, a Senator from the State of Missouri, by his sympathy with and participation in the rebellion against the Government of the United States has been guilty of conduct incompatible with his duty and station as a Senator; and that he be therefor, and hereby is, expelled from the Senate of the United States."

THURSDAY, *December* 12, 1861.

The Senate proceeded to consider the resolution, submitted by Mr. Foot the 9th instant, to expel Waldo P. Johnson, a Senator from the State of Missouri, from the Senate; and

After debate,

On motion by Mr. Saulsbury that the resolution be referred to the Committee on the Judiciary, with instructions to inquire into the facts of the case, it was determined in the affirmative.

THURSDAY, *January* 9, 1862.

Mr. Trumbull, from the Committee on the Judiciary, to whom was referred a resolution to expel Waldo P. Johnson, a Senator from the State of Missouri, reported the resolution without amendment, and with a recommendation that the resolution do pass.

Mr. Trumbull submitted a report (No. 5) on the subject; which was ordered to be printed.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Trumbull (chairman), Foster, Ten Eyck, Cowan, Harris, Bayard, and Powell.]

IN THE SENATE OF THE UNITED STATES.

JANUARY 9, 1862.—Submitted, and ordered to be printed.

Mr. Trumbull made the following report:

The Committee on the Judiciary, to whom was referred a resolution for the expulsion from the Senate of Waldo P. Johnson, a Senator from the State of Missouri, submit the following report:

Previous to his election to the Senate Mr. Johnson was known in Missouri as entertaining secession proclivities, and to sympathize and co-operate with the prominent citizens of that State who are now in open rebellion against the Government. He was elected to the Senate by a legislature which has since sought to array the State against the Union. Since his election he is reported to have made a speech evincing a spirit hostile to the Government, *which speech was extensively* published in the State of

Missouri without public contradiction from him. He has not appeared in his seat in the Senate since the session began; and though the resolution for his expulsion was proposed in the Senate on the 10th day of December, and referred to this committee on the 12th day of December, 1861, and has been extensively published in Missouri and other parts of the Union, the said Johnson has wholly failed to furnish any reason for his absence, or explanation of the charges of disloyalty urged against him.

The failure of said Johnson for so long a period to appear in his place to discharge the high duties incumbent upon him for the preservation of the Republic in this time of rebellion against its authority, and his silence under the imputations upon his loyalty which, from their publicity, could not have escaped his notice if within a loyal portion of the Union, of themselves furnish strong presumptive grounds against his fidelity to the Government.

His whereabouts at this time the committee have been unable, with actual certainty to ascertain. They are satisfied that, had he been so disposed, there was nothing to prevent his attendnnce on the Senate at its commencement; and when last heard from he was reported to have gone voluntarily within the lines of rebels in arms against the Government.

Under these circumstances, the committee are of the opinion that he ought to be expelled from the body, and they accordingly report the resolution back to the Senate with a recommendation that it do pass.

FRIDAY, *January* 10, 1862.

On motion by Mr. Trumbull, the Senate proceeded to consider the resolution submitted by Mr. Foot the 10th of December, expelling from the Senate Waldo P. Johnson a Senator from the State of Missouri; and

On the question to agree to the resolution, as follows:

"*Resolved*, That Waldo P. Johnson, a Senator from the State of Missouri, by his sympathy with, and participation in, the rebellion against the Government of the United States, has been guilty of conduct incompatible with his duty and station as a Senator and that he be therefor, and hereby is, expelled from the Senate of the United States,"

It was determined in the affirmative—yeas 35, nays none.

Those who voted in the affirmative are Messrs. Anthony, Bayard, Bright, Browning, Carlile, Chandler, Collamer, Cowan, Davis, Dixon, Fessenden, Foster, Grimes, Hale, Harlan, Harris, Howe, Johnson, King, Lane of Indiana, Lane of Kansas, Morrill, Nesmith, Pomeroy, Powell, Rice, Saulsbury, Sherman, Simmons, Sumner, Ten Eyck, Thomson, Trumbull, Wade, and Wilson.

So the resolution was agreed to, two-thirds of the Senators present having voted in the affirmative.

* * * * * * *

Mr. Trumbull submitted the following motion; which was considered by unanimous consent, and agreed to:

Ordered, That the Vice-President be requested to transmit to the governor of the State of Missouri copies of the resolution expelling Waldo P. Johnson and Trusten Polk from the Senate, attested by the Secretary of the Senate.

[Thirty-seventh Congress—Second session.]

JESSE D. BRIGHT,

Senator from Indiana from March 4, 1845, *to February* 5, 1862.

December 16, 1861, a resolution was submitted that Mr. Bright be expelled from the Senate. The preamble stated that Mr. Bright had written a certain letter (given below) which was believed to be evidence of disloyalty to the United States, and calculated to give aid and comfort to the public enemies. The resolution was referred to the Committee on the Judiciary. January 13, 1862, the committee reported that in their opinion the facts charged against Mr. Bright were not sufficient to warrant his expulsion and recommended that the resolution do not pass. February 5, 1862, after a long debate the Senate agreed to the resolution by a vote of 32 yeas to 14 nays, and, more than two-thirds of the Senators present voting in the affirmative, Mr. Bright was expelled.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 2d sess. 37th Cong., with the report of the committee taken from the Congressional Globe.

The debates in the case are found in the Congressional Globe, part 1, 2d sess. 37th Cong., and the Appendix contained in part 4 of the same.

Special references to the debates of each day are inserted below.

MONDAY, *December* 16, 1861.

Mr. Wilkinson submitted the following resolution; which was considered, by unanimous consent, and referred to the Committee on the Judiciary:

"Whereas the Hon. Jesse D. Bright heretofore, on the 1st day of March, 1861, wrote a letter, of which the following is a copy:

"'WASHINGTON, *March* 1, 1861.

"'MY DEAR SIR: Allow me to introduce to your acquaintance my friend, Thomas B. Lincoln, of Texas. He visits your capital mainly to dispose of what he regards a great improvement in fire-arms. I commend him to your favorable consideration as a gentleman of the first respectability, and reliable in every respect.

"'Very truly yours,

"'JESSE D. BRIGHT.

"'To his Excellency JEFFERSON DAVIS,

"'*President of the Confederation of States.*'

"And whereas we believe the said letter is evidence of disloyalty to the United States, and is calculated to give aid and comfort to the public enemies: Therefore,

"*Resolved*, That the said Jesse D. Bright be expelled from his seat in the Senate of the United States."

Mr. Wilkinson also submitted a paper in relation to the aforesaid resolution; which was referred to the Committee on the Judiciary.

[Remarks by Mr. Bright and another letter written by him are found on page 89 of the Congressional Globe referred to in the head-note.]

FRIDAY, *December* 20, 1861.

Mr. Trumbull presented a memorial of James M. Logan and others, loyal citizens of the State of Indiana, praying for the removal of the Hon. Jesse D. Bright from the United States Senate; which was referred to the Committee on the Judiciary.

MONDAY, *January* 13, 1862.

Mr. Cowan, from the Committee on the Judiciary, to whom was referred a resolution for the expulsion of Jesse D. Bright, a Senator from the State of Indiana, from the Senate, reported it without amendment, and with a recommendation that the resolution do not pass.

The Senate resumed the consideration of the said resolution; and

On motion by Mr. Wilkinson,

Ordered, That the further consideration thereof be postponed to, and made the special order of the day for, Thursday, the 16th instant, at 1 o'clock

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Trumbull (chairman), Foster, Ten Eyck Harris, Bayard, and Powell.]

The Committee on the Judiciary, to whom was referred a resolution to expel t Jesse D. Bright from his seat in the United States Senate, respectfully report:

That they are of opinion that the facts charged against Mr. Bright are not s to warrant his expulsion from the Senate; and they therefore recommend that lution do not pass.

MONDAY, *January* 20,

The Vice-President called up the special order of the day, and the Senate the consideration of the resolution submitted by Mr. Wilkinson on the 16th of ber last, for the expulsion of the Hon. Jesse D. Bright from the Senate, report adversely by the Committee on the Judiciary; and

After debate,

On motion by Mr. Hale, the Senate adjourned.

[The debate is found on pages 391–398 of the Congressional Globe referred t head-note.]

TUESDAY, *January* 21,

The Senate resumed, &c.

[The debate is found on pages 412–419 of the Congressional Globe referred head-note.]

WEDNESDAY, *January* 22,

The Senate resumed, &c.

[The debate is found on pages 431–435 of the Congressional Globe referred t head-note.]

THURSDAY, *January* 23,

The Senate resumed, &c.

[The debate is found on pages 447–454 of the Congressional Globe referred head-note.]

FRIDAY, *January* 24,

The Senate resumed, &c.

[The debate is found on pages 470, 471 of the Congressional Globe referred head-note.]

MONDAY, *January* 27,

The Senate resumed, &c.

[The debate is found on pages 37–42 of the Appendix to the Congressional G ferred to in the head-note.]

WEDNESDAY, *January* 29,

The Senate resumed, &c.

[The debate is found on pages 539–545 of the Congressional Globe referred head-note.]

THURSDAY, *January* 30,

The Senate resumed, &c.

[The debate is found on pages 559–564 of the Congressional Globe referred t head-note.]

FRIDAY, *January* 31,

The Senate resumed, &c.

[The debate is found on pages 582–592 of the Congressional Globe referred t head-note.]

TUESDAY, *February* 4,

The Senate resumed, &c.

[The debate is found on pages 622–629 of the Congressional Globe referred t head-note.]

WEDNESDAY, *February* 5,

The Senate resumed the consideration of the resolution submitted by Mr. Wi the 16th of December, for the expulsion of the Hon. Jesse D. Bright from the and reported upon adversely by the Committee on the Judiciary; and

After debate,

On the question to agree to the resolution as follows:

"Whereas the Hon. Jesse D. Bright, heretofore, on the 1st day of March, 18 a letter of which the following is a copy:

*Found on page 287 of the Congressional Globe referred to in the head-note.

"'WASHINGTON, *March* 1, 1861.

"MY DEAR SIR: Allow me to introduce to your acquaintance my friend, Thomas B. Lincoln, of Texas. He visits your capital mainly to dispose of what he regards a great improvement in fire-arms. I commend him to your favorable consideration as a gentleman of the first respectability, and reliable in every respect.

"'Very truly yours,

"'JESSE D. BRIGHT.

"'His Excellency JEFFERSON DAVIS,
"'*President of the Confederation of States.*'

"And whereas we believe the said letter is an evidence of disloyalty to the United States, and is calculated to give aid and comfort to the public enemies: Therefore,

"*Resolved*, That the said Jesse D. Bright be expelled from his seat in the Senate of the United States,"

It was determined in the affirmative—yeas 32, nays 14.

Those who voted in the affirmative are Messrs. Anthony, Browning, Chandler, Clark, Collamer, Davis, Dixon, Doolittle, Fessenden, Foot, Foster, Grimes, Hale, Harlan, Henderson, Howard, Howe, Johnson, King, Lane of Indiana, McDougall, Morrill, Pomeroy, Sherman, Simmons, Sumner, Trumbull, Wade, Wilkinson, Wilmot, Wilson of Massachusetts, and Wilson of Missouri.

Those who voted in the negative are Messrs. Bayard, Carlile, Cowan, Harris, Kennedy, Latham, Nesmith, Pearce, Powell, Rice, Saulsbury, Ten Eyck, Thomson, and Willey.

So the resolution was agreed to, two-thirds of the Senators present having voted in the affirmative; and it was

Resolved, That the said Jesse D. Bright be expelled from his seat in the Senate of the United States.

[The debate is found on pages 644–655 of the Congressional Globe referred to in the head-note.]

THURSDAY, *February* 6, 1862.

On motion by Mr. Wilkinson,

Ordered, That the Vice-President be requested to transmit to the executive of the State of Indiana a copy of the resolution expelling Jesse D. Bright from the Senate, attested by the Secretary of the Senate.

[Thirty-seventh Congress—Second session.]

BENJAMIN STARK,

Senator from Oregon from February 27, 1862, *till September* 13, 1862.

January 6, 1862, the credentials of Mr. Stark, who had been appointed by the governor of Oregon to fill a vacancy, were presented in the Senate. A resolution was submitted that the oath be not administered to Mr. Stark, and that his credentials be referred to the Committee on the Judiciary. January 10, after a debate on the *prima facie* right of Mr. Stark to the seat, the resolution was agreed to. February 7, the committee, "without expressing any opinion as to the effect of the papers before them upon any subsequent proceedings in the case," reported a resolution that Mr. Stark was entitled to take the oath of office. Mr. Trumbull, dissenting, "conceived that it was the duty of the committee to have expressed its opinion on the evidence of disloyalty before it, and to have reported in favor of or against the swearing in of the Senator, as the evidence should warrant, and not allow him to be first sworn and leave the question of his loyalty to be subsequently determined on a motion to expel." The report was accompanied by testimony. February 27 the resolution reported by the committee passed after amendment, and Mr. Stark took his seat. February 28 a resolution was submitted that the papers relating to the loyalty of Benjamin Stark be referred to the same committee with instructions to investigate the charges preferred against him. March 18 this resolution passed the Senate, having been so amended that the papers were referred to a select committee instead of to the Committee on the Judiciary. April 22 this committee reported the conclusions from the facts proved, one of which was "that the Senator from Oregon is disloyal to the Government of the United States." One member of the committee did not concur in this conclusion. May 7 a resolution was submitted that Mr. Stark, who had been found disloyal by a committee of the Senate, be expelled, which resolution was determined in the negative, June 6, by a vote of 16 yeas to 21 nays.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journal, 2d sess. 37th Cong.; the report (majority and minority) of the Committee on the Judiciary (excepting the evidence), from Senate Reports, 2d sess. 37th Cong., No. 11; and the report of the select committee from Senate Reports, *Ib.* No. 38.

Special references to the debates of each day are inserted below.

MONDAY, *January* 6, 1862.

Mr. Nesmith presented the credentials of the Hon. Benjamin Stark, appointed a Senator in Congress by the governor of the State of Oregon to fill the vacancy occasioned by the death of the Hon. Edward D. Baker; which were read.

Mr. Fessenden moved that the oath prescribed by law be not administered to Mr. Stark, and that his credentials, together with certain papers presented by Mr. Fessenden, be referred to the Committee on the Judiciary.

After debate,

On motion by Mr. Bayard,

Ordered, That the motion of Mr. Fessenden lie on the table.

[The debate is found on pages 183-185 of the Congressional Globe, part 1, 2d sess. 37th Cong.]

THURSDAY, *January* 9, 1862.

On motion by Mr. Bayard that the Senate proceed to the consideration of the motion submitted by Mr. Fessenden the 6th instant, that the oath prescribed by law be not administered to Mr. Stark, and that his credentials, together with certain papers presented by Mr. Fessenden, be referred to the Committee on the Judiciary, it was determined in the negative.

FRIDAY, *January* 10, 1862.

The Senate resumed the consideration of the motion submitted by Mr. Fessenden the 6th instant, "that the oath prescribed by law be not administered to Mr. Stark, and that his credentials, together with certain papers presented by Mr. Fessenden, be referred to the Committee on the Judiciary."

On motion by Mr. Bayard to amend the motion of Mr. Fessenden by striking out the word "not,"

After debate, it was determined in the negative—yeas 9, nays 29.

On motion by Mr. Bayard, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Bright, Latham, Nesmith, Pearce, Powell, Rice, Saulsbury, and Thomson.

Those who voted in the negative are Messrs. Anthony, Browning, Chandler, Collamer, Cowan, Davis, Dixon, Doolittle, Fessenden, Foster, Grimes, Hale, Harlan, Harris, Howe, Johnson, King, Lane of Indiana, Lane of Kansas, Morrill, Pomeroy, Sherman, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, and Wilson.

On the question to agree to the motion of Mr. Fessenden, it was determined in the affirmative—yeas 28, nays 11.

On motion by Mr. Saulsbury, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Browning, Chandler, Collamer, Cowan, Davis, Dixon, Doolittle, Fessenden, Foster, Grimes, Hale, Harlan, Harris, Howe, Johnson, King, Lane of Indiana, Lane of Kansas, Morrill, Pomeroy, Sherman, Simmons, Sumner, Ten Eyck, Trumbull, Wade, and Wilson.

Those who voted in the negative are Messrs. Bayard, Bright, Carlile, Kennedy, Latham, Nesmith, Pearce, Powell, Rice, Saulsbury, and Thomson.

[The debate is found on pages 265–269 of the Congressional Globe, part 1, 2d sess. 37th Cong.]

FRIDAY, *February* 7, 1862.

Mr. Harris, from the Committee on the Judiciary, to whom were referred the credentials of the Hon. Benjamin Stark, with certain papers presented by Mr. Fessenden in reference thereto, submitted a report (No. 11), accompanied by the following resolution (resolution given below in report).

Mr. Trumbull asked and obtained leave to submit the views of the minority of the Committee on the Judiciary on the subject.

On motion by Mr. Sumner,

Ordered, That the report of the Committee on the Judiciary, with the views of the minority of the committee, and the accompanying papers, be printed.

[The debate is found on pages 696, 697 of the Congressional Globe, part 1, 2d sess. 37th Cong.]

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Trumbull (chairman), Foster, Ten Eyck, Cowan Harris, Bayard, and Powell.]

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 7, 1862.—Read, and ordered to be printed.

Mr. Harris submitted the following report:

The Committee on the Judiciary, to whom were referred the credentials of Benjamin Stark as a Senator from the State of Oregon, with the accompanying papers, have had the same under consideration, and, without expressing any opinion as to the effect of the papers before them upon any subsequent proceedings in the case, they report the following resolution:

Resolved, That Benjamin Stark, of Oregon, appointed a Senator of that State by the governor thereof, is entitled to take the Constitutional oath of office.

VIEWS OF THE MINORITY

Of the Committee on the Judiciary (Mr. Trumbull) on the credentials of Benjamin Stark as a Senator from Oregon, and the papers presented on the subject.

FEBRUARY 7, 1862.—Ordered to be printed.

Unable to agree with the majority of the committee, to whom were referred the credentials of Benjamin Stark, with the accompanying papers, the undersigned submits the following views:

A preliminary question was raised in the Senate when this case was referred to the committee, whether it was competent for the Senate for any cause to refuse to allow a person to be sworn as a member of the Senate whose credentials were in proper form, and who possessed all the qualifications as to age, citizenship, and inhabitancy prescribed by the Constitution, and whether the only remedy which the Senate had to protect itself against the presence of an infamous person, a convicted felon, or an avowed and open traitor, was not by expulsion by a two-thirds vote after he should have been sworn into office. The Senate decided, after debate, to refer the credentials of Mr. Stark, with the accompanying papers, consisting of written statements and affidavits impeaching his loyalty, to the committee without allowing him to be sworn. A majority of the committee now report the case back, with a resolution that Mr. Stark is entitled to take the Constitutional oath, expressly stating that they do so "without expressing any opinion as to the effect of the papers before them upon any subsequent proceedings in the case."

This reservation of opinion on the evidence could only have become necessary on the sup-

* The accompanying documents are annexed to the report (pages 5–15), a reference to which is given in the head-note.

position that some subsequent proceedings might be taken in the case, referring doubtless to a motion to expel the Senator after he should have been admitted a member, for the reasons assigned in the accompanying papers, in effect establishing the principle that evidence of disloyalty, which might be sufficient to expel a member when admitted, was not sufficient to prevent his qualifying as a member. To this principle the undersigned cannot agree. He believes it was the duty of the committee to examine and pass upon the evidence before it, and if found insufficient to prevent Mr. Stark from taking the Constitutional oath, that it would also be insufficient to warrant his expulsion after he was admitted.

It is admitted that neither the Senate, Congress, nor a State can superadd other qualifications for a Senator to those prescribed by the Constitution, and yet either may prevent a person possessing all those qualifications, and duly elected, from taking his seat in the Senate. Does any one question the right of a State to arrest for crime a person duly qualified for and appointed a Senator, hold him in confinement, and thereby prevent his appearing in the Senate to qualify? Suppose a Senator, after his appointment, and before qualifying, to commit the crime of murder, would any one question the right of the State authorities where the crime was committed to arrest, confine, and, if found guilty, execute the murderer, and thereby forever prevent his taking his seat? Or, if the punishment for the offense was imprisonment, would any one question the right to hold the Senator in prison, and thereby prevent his appearing in the Senate?

Could the Senate in such a case expel him before he had been admitted to a seat? Or must he [be] brought from the felon's cell, be introduced into the Senate, and sworn as a member before his seat could be declared vacant? If not, must the State go unrepresented till the time for which he was appointed has expired? Or would it be competent for the Senate in such a case, by a majority vote, to declare the convict incompetent to hold a seat in the body, and thereby open the way for the appointment of a successor? It is manifest that the prescribing of the qualifications for a Senator in the Constitution was not intended to prevent his being held amenable for his crimes. The fact that the Constitution declares that Senators and Representatives "shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same," is conclusive that for those offenses they may be arrested. As a punishment for crime, then, it is clear that a Senator-elect, possessing all the Constitutional qualifications of age, citizenship, and inhabitancy, may be prevented from taking the oath of office. Congress has repeatedly acted upon the presumption that it was entirely competent for it to prescribe, as a punishment for crime, an inability forever afterwards to hold any office of honor, profit, or trust under the United States.

By a statute passed in 1790, any person giving a reward to a United States judge as a bribe to procure from him any opinion or judgment, and the judge receiving such bribe, are both declared to be forever disqualified to hold any office of honor, trust, or profit under the United States. By an act passed in 1853, any member of Congress after his election, and whether before or after he is qualified, who shall accept any reward given for the purpose of influencing his vote on any question which may come before him in his official capacity is declared incapable forever of holding any office of honor, trust, or profit under the United States. Similar laws, it is believed, exist in most of the States, prescribing as part of the punishment for particular offenses, such as dueling, bribery, and some others, a disqualification for holding any office under the State, and this notwithstanding the State constitutions may have prescribed the qualifications for members of their legislatures, of which the disqualification arising from the conviction for crime was not one. The power of Congress to prescribe the punishment for treason is expressly given by the Constitution, except that it cannot be made to work corruption of blood or forfeiture beyond the life of the person attainted. Does any one doubt the power of Congress under this clause of the Constitution to declare that a person convicted of treason should forever be incapable of holding any office under the United States? If this were done, would it be pretended that a convicted traitor was entitled to be sworn as a Senator? The clause of the Constitution prescribing the qualifications of Senators and Representatives could never have been intended to limit the power to make disqualification to hold those or any other offices a penalty for the commission of crime, especially treason. Its design, doubtless, was to produce uniformity of qualification in all the States, and to prevent any particular class of persons, such as ministers of the gospel, or others, from being excluded from these positions. If it be competent for Congress to make disqualification to hold office a punishment for an offense against the United States, then it is clearly competent for the Senate, which, by the Constitution, is made "the judge of the elections, returns, and qualifications of its own members," to do the same thing, so far as the right to take a seat in that body is concerned. Doubtless a law of Congress declaring that a person convicted of a particular offense should not hold office under the United States, and the decision of the

courts sustaining such a law, would not preclude the Senate from admitting such a person to a seat, should it think proper, because the Senate is the exclusive judge of the elections, returns, and qualifications of its own members; yet it is hardly conceivable that the Senate ever would admit such a person to be sworn; nor does the fact that Congress has not adopted such a punishment for disloyalty or treason prevent the Senate from refusing to allow to be sworn as a member a person believed by the body to be guilty of those offenses or other infamous crimes.

That one avowed traitor, a convicted felon, or a person known to be disloyal to the Government, has a constitutional right to be admitted into the body, would imply that the Senate had no power of protecting itself—a power which, from the nature of things, must be inherent in every legislative body. Suppose a member sent to the Senate, before being sworn, were to disturb the body and by violence interrupt its proceedings, would the Senate be compelled to allow such a person to be sworn as a member of the body before it could cast him out? Surely not, unless the Senate is unable to protect itself and preserve its own order. The Constitution declares that "each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member." The connection of the sentence in which the power of expulsion is given would indicate that it was intended to be exercised for some act done as a member, and not for some cause existing before the member was elected or took his seat. For any crime or infamous act done before that time the appropriate remedy would seem to be to refuse to allow him to qualify, which, in the judgment of the undersigned, the Senate may properly do; not by way of adding to the qualifications imposed by the Constitution, but as a punishment due to his crimes or the infamy of his character. Hence, the undersigned, conceiving that it was the duty of the committee to have expressed its opinion on the evidence of disloyalty before it, and to have reported in favor of or against the swearing in of the Senator, as the evidence should warrant, and not allow him to be first sworn, and leave the question of his loyalty to be subsequently determined on a motion to expel, the undersigned forbears to review the evidence of disloyalty before the committee, or to express any opinion upon it, till the pending question of jurisdiction to consider it is determined.

LYMAN TRUMBULL.

TUESDAY, *February* 18, 1862.

On motion by Mr. Harris, the Senate proceeded to consider the resolution reported by the Committee on the Judiciary, declaring Benjamin Stark, appointed a Senator by the governor of the State of Oregon, entitled to take the constitutional oath of office; and

On motion by Mr. Hale that the report of the Committee on the Judiciary in the case of Benjamin Stark, of Oregon, appointed a Senator of that State by the governor thereof, be recommitted to the committee, and that said committee be instructed to report on the facts proved or admitted, whether, in their judgment, the evidence before them so far impeaches his loyalty as to disqualify him from holding a seat in the Senate of the United States,

After debate,

On motion by Mr. Doolittle, the Senate adjourned.

[The debate is found on pages 861–873 of the Congressional Globe, part 1, 2d sess. 37th Cong.]

THURSDAY, *February* 20, 1862.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary, declaring that Benjamin Stark, appointed a Senator by the governor of the State of Oregon, is entitled to take the constitutional oath of office; and

On motion by Mr. Wilkinson,

Ordered, That the further consideration thereof be postponed to to-morrow at 1 o'clock.

MONDAY, *February* 24, 1862.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary, declaring Benjamin Stark, appointed a Senator by the governor of the State of Oregon, entitled to take the constitutional oath of office; and,

After debate and the consideration of executive business, the Senate adjourned.

[The debate is found on pages 925–929 of the Congressional Globe, part 1, 2d sess. 37th Cong.]

WEDNESDAY, *February* 26, 1862.

On motion by Mr. Harris, the Senate resumed the consideration of the resolution reported by the Committee on the Judiciary, affirming the right of Benjamin Stark, ap-

pointed a Senator by the governor of the State of Oregon, to take the constitutional oath of office; and

Mr. Hale having withdrawn the motion made by him to recommit the report to the Committee on the Judiciary, with certain instructions,

On motion by Mr. Sumner to amend the resolution by striking out the words "is entitled to take the constitutional oath of office," and in lieu therof inserting "and now charged with disloyalty by the affidavits of many citizens of Oregon, and also by a letter addressed to the Secretary of State, and signed jointly by many citizens of Oregon, some of whom hold public trusts under the United States, is not entitled to take the constitutional oath of office without a previous investigation into the truth of the charge,"

After debate,

On motion by Mr. Fessenden that the Senate adjourn, it was determined in the affirmative—yeas 21, nays 20.

[The debate is found on pages 963–975 of the Congressional Globe, part 2, 2d sess. 37th Cong.]

THURSDAY, *February* 27, 1862.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary, affirming the right of Benjamin Stark, appointed a Senator by the governor of the State of Oregon, to take the constitutional oath of office; and

On the question to agree to the amendment proposed by Mr. Sumner to the resolution, viz:

Strike out the words "is entitled to take the constitutional oath of office" and in lieu thereof insert "and now charged with disloyalty by the affidavits of many citizens of Oregon, and also by a letter addressed to the Secretary of State, and signed jointly by many citizens of Oregon, some of whom hold public trusts under the United States, is not entitled to take the constitutional oath of office without a previous investigation into the truth of the charge,"

After debate, it was determined in the negative—yeas 18, nays 26.

On motion by Mr. Sumner, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Chandler, Clark, Dixon, Doolittle, Grimes, Hale, Harlan, Howard, King, Lane of Indiana, Morrill, Pomeroy, Sumner, Trumbull, Wade, Wilkinson, Wilmot, and Wilson of Massachusetts.

Those who voted in the negative are Messrs. Anthony, Browning, Carlile, Collamer, Cowan, Davis, Fessenden, Foster, Harris, Henderson, Howe, Johnson, Kennedy, Latham, McDougall, Nesmith, Pearce, Powell, Rice, Saulsbury, Sherman, Simmons, Ten Eyck, Thomson, Willey, and Wilson of Missouri.

On motion by Mr. Doolittle to amend the resolution by inserting at the end thereof the words "without prejudice to any subsequent proceedings in the case," it was determined in the affirmative.

On the question to agree to the resolution as amended, as follows:

"*Resolved*, That Benjamin Stark, of Oregon, appointed a Senator of that State by the governor thereof, is entitled to take the constitutional oath of office without prejudice to any subsequent proceedings in the case,"

It was determined in the affirmative—yeas 26, nays 19.

On motion by Mr. Sumner, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Browning, Carlile, Collamer, Cowan, Davis, Fessenden, Foster, Harris, Henderson, Howe, Johnson, Kennedy, Latham, McDougall, Nesmith, Pearce, Powell, Rice, Saulsbury, Sherman, Simmons, Ten Eyck, Thomson, Willey, and Wilson of Missouri.

Those who voted in the negative are Messrs. Chandler, Clark, Dixon, Doolittle, Foot, Grimes, Hale, Harlan, Howard, King, Lane of Indiana, Morrill, Pomeroy, Sumner, Trumbull, Wade, Wilkinson, Wilmot, and Wilson of Massachusetts.

So the resolution as amended was agreed to; and

The Vice-President administered to Mr. Stark the oath prescribed by law, and he took his seat in the Senate.

[The debate is found on pages 988–994 of the Congressional Globe, part 2, 2d sess. 37th Cong.]

FRIDAY, *February* 28, 1862.

Mr. Stark submitted the following resolution for consideration:

"*Resolved*, That the papers relating to the loyalty of Benjamin Stark, a Senator from Oregon, be withdrawn from the files of the Senate and referred to the Committee on the Judiciary, with instructions to investigate the charges preferred against said Stark on all evidence which has been or may be presented, and with power to send for persons and papers."

The Senate proceeded, by unanimous consent, to consider the said resolution; and After debate,

On motion by Mr. McDougall that the resolution lie on the table, it was determined in the negative—yeas 7, nays 32.

On motion by Mr. King, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Carlile, Hale, McDougall, Nesmith, Pearce, Powell, and Saulsbury.

Those who voted in the negative are Messrs. Anthony, Browning, Chandler, Clark, Collamer, Cowan, Dixon, Doolittle, Fessenden, Foot, Foster, Grimes, Harlan, Harris, Henderson, Howard, Howe, Johnson, King, Lane of Indiana, Latham, Morrill, Pomeroy, Rice, Sherman, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, Willey, and Wilson of Massachusetts.

Pending further debate upon the resolution,

The Vice-President announced that the hour of 1 o'clock had arrived, and that it was the duty of the Chair to call up the special order of the day for that hour, which was the bill (S. 151) to confiscate the property and free the slaves of rebels, being the unfinished business of the Senate at its last adjournment; and the Senate resumed the consideration of the said bill.

[The debate is found on pages 1011–1014 of the Congressional Globe, part 2, 2d sess. 37th Cong.]

TUESDAY, *March* 18, 1862.

On motion by Mr. Howe, the Senate resumed the consideration of the resolution submitted by Mr. Stark the 28th of February, in relation to an investigation into certain charges of disloyalty preferred against him; and

After debate,

On motion by Mr. Wilkinson that the resolution lie on the table, it was determined in the negative—yeas 3, nays 35.

On motion by Mr. Howe, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Hale, Saulsbury, and Wilkinson.

Those who voted in the negative are Messrs. Anthony, Bayard, Browning, Clark, Collamer, Cowan, Davis, Dixon, Doolittle, Fessenden, Foot, Foster, Harlan, Harris, Henderson, Howard, Howe, Kennedy, King, Lane of Indiana, Lane of Kansas, Latham, Morrill, Nesmith, Pomeroy, Powell, Sherman, Simmons, Sumner, Ten Eyck, Thomson, Trumbull, Wade, Wilmot, and Wilson of Massachusetts.

After further debate,

On motion by Mr. Trumbull to amend the resolution by striking out the words "the Committee on the Judiciary" and inserting "a select committee to consist of five members," it was determined in the affirmative.

On the question to agree to the resolution, as amended, as follows:

"*Resolved*, That the papers relating to the loyalty of Benjamin Stark, a Senator from Oregon, be withdrawn from the files of the Senate and referred to a select committee to consist of five members, with instructions to investigate the charges preferred against said Stark on all evidence which has been or may be presented, and with power to send for persons and papers,"

It was determined in the affirmative—yeas 37, nays 3.

On motion by Mr. Hale, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Browning, Clark, Collamer, Cowan, Davis, Dixon, Doolittle, Fessenden, Foot, Foster, Harlan, Harris, Henderson, Howard, Howe, Kennedy, King, Lane of Indiana, Lane of Kansas, Latham, Morrill, Nesmith, Pomeroy, Powell, Rice, Sherman, Simmons, Sumner, Ten Eyck, Thomson, Trumbull, Wade, Wilkinson, Wilmot, Wilson of Massachusetts, and Wright.

Those who voted in the negative are Messrs. Bayard, Hale, and Saulsbury.

So the resolution as amended was agreed to.

On motion by Mr. Collamer,

Ordered, That the select committee authorized by the said resolution be appointed by the Vice-President.

The Vice-President appointed Mr. Clark, Mr. Howard, Mr. Wright, Mr. Willey, and Mr. Howe.

[The debate is found on pages 1261–1266 of the Congressional Globe, part 2, 2d sess. 37th Cong.]

TUESDAY, *April* 2, 1862.

Mr. Clark, from the select committee appointed to investigate the truth of certain charges against the Hon. Benjamin Stark, a Senator from the State of Oregon, submitted a report (No. 38), which was ordered *to be printed*.

REPORT OF SELECT COMMITTEE.

[The committee consisted of Messrs. Clark, Howard, Wright, Willey, and Shen

IN THE SENATE OF THE UNITED STATES.

APRIL 22, 1862.—Ordered to be printed.

Mr. Clark submitted the following report:

The select committee to whom were referred "the papers relating to the loy Benjamin Stark, a Senator from Oregon," report:

By the resolution under which the committee were appointed they were inst "to investigate the charges preferred against said Stark on all the evidence whi been or may be presented, and with power to send for persons and papers."

The first question which presented itself for the consideration of the committe whether they would proceed to take further testimony than that already tak referred to them by the resolution. In determining this question the committe influenced by the facts that the Senator whose loyalty is questioned comes fr distant State of Oregon; that the witnesses who could be supposed to know n regard to his loyalty resided in that State, and that their testimony could not l until the next session of Congress; that the Senator was appointed by the gove Oregon to fill the vacancy occasioned by the death of the lamented Baker, and t term would expire upon the meeting of the legislature of Oregon in Septembe and before the testimony could be received and used.

The committee therefore came to the conclusion that it was not practicable t further testimony, unless the Senator from Oregon, Mr. Stark, might desire to ta timony to rebut that already before the committee.

To ascertain Mr. Stark's desire on this point, they caused to be addressed to letter, of which the following is a copy:

UNITED STATES SENATE,
Committee Room on Claims, March 20,

SIR: At a meeting of the select committee authorized by the resolution of the of the 18th instant "to investigate the charges preferred against Mr. Stark, on dence which has been or may be presented, with power to send for persons and p the following resolution was adopted:

On motion by Mr. Howard,

"*Resolved*, That the Hon. Mr. Stark be notified of the next meeting of the com and be invited to attend and submit to the committee any suggestions or mat may be pleased to present in relation to the subject with which the comm charged."

In conformity with the foregoing resolution you are respectfully notified that t meeting of the committee will be held at the room of the Senate Committee on on Monday next, the 24th instant, at 11 o'clock a. m., which you are invited to

By order of the committee.

N. C. TOWLE
Clerk Select Committe

Hon. BENJAMIN STARK,
Senator from Oregon.

The committee met on the 24th of March, and the Senator from Oregon atten meeting in compliance with the invitation of the committee, and desired that tl mittee should examine the papers before them, and if they should come to the con that grounds were furnished for the charge of disloyalty by the papers and test that the committee should draw up specific charges, to which he would file his This the committee declined to do, for the reason that they did not wish to bec prosecutors, and were charged by the Senate with investigation and not accusati

Mr. Stark was informed that the committee did not propose to take any furth mony unless he desired it, but would investigate the charges as presented by the then before them. To which the committee understood Mr. Stark to reply that not wish to take any further testimony as the matter stood. It was then sugge the committee to the Senator from Oregon that he should sumbit to the commi answer in writing to the allegations and evidence then before the committee, w further evidence he might wish to present, and that the committee would adj afford him the necessary time for that purpose.

With this proposal the Senator expressed his compliance and satisfaction, s committee adjourned to meet again at his convenience.

* Mr. Sherman was appointed in place of Mr. Howe, excused

At a subsequent meeting of the committee on the 14th April the following statement was presented from Mr. Stark and considered:

WASHINGTON, D. C., *April* 10, 1862.

SIR: I have the honor to acknowledge the reception of a note from your committee, inviting me to make any suggestions I may think proper upon the statements and *ex parte* affidavits in relation to my loyalty, which were referred to the committee under the resolution adopted by the Senate on the —— ultimo.

Deeply sensible of the courtesy of the committee thus extended to me, I regret that unavoidable absence from the city and the pressure of other engagements have prevented me from making an earlier response.

I presume that in extending to me this invitation before entering upon the investigation necessary to a discharge of the delicate duty devolved upon them by the Senate the committee designed simply to afford me an opportunity, if I should deem it proper to do so, to present my personal views of the matter now pending before them.

Under the resolution of reference, the committee are clothed with the fullest powers for the purpose of confirming or dissipating any doubts which may have been engendered by these statements and affidavits as to my loyalty. In offering that resolution I have shown, I think conclusively, that there was no disposition on my part to shun the most searching investigation. If the committee propose to confine their investigation exclusively to those statements and *ex parte* affidavits now before them, in connection with what I may submit for their consideration, it may not be inappropriate for me to express my opinions in regard to them, and I shall do so in the same spirit by which the committee appear to have been actuated in making the request.

As it could not be fairly supposed that I would permit myself to occupy the attitude of self-prosecutor, or that I would assume the task of defending myself when no charge on *prima facie* evidence had been preferred against me, I trust that I may do so without derogating from the true position which my honor and self-respect demand that I should occupy.

With all due deference, therefore, I submit that as a Senator of the United States for the State of Oregon I am entitled to, and I claim, every presumption of honor, integrity, loyalty, and patriotism that can be claimed by any other Senator until such presumption is overborne by competent testimony. It certainly would be very extraordinary to put an honorable Senator upon trial for expulsion without charges and specifications made with reasonable (if not technical) precision, and supported by testimony subjected to all the tests which human wisdom and human experience have found to be essential for the ascertainment of truth. Should such a case ever arise it is reasonable to suppose that it would not be permitted long to interrupt the order or disturb the decorum of the American Senate. Unless the proceedings of your committee are to be regarded as a preliminary inquiry whether or not charges for expulsion ought to be preferred against me, in what essential particular does this case differ from the one suggested?

The papers referred to you I have again examined with that earnest attention which a deep personal interest in the result of an inquiry must ever stimulate, and with the light reflected upon them by the communication which I had the honor to address to the Committee on the Judiciary, under date of January 17th ultimo, I am unable to discover anything upon which a sufficient charge for expulsion can be predicated, or anything in the nature of evidence which an impartial tribunal could receive as sufficient to justify expulsion from the Senate. Accepting all the statements contained in the letters, affidavits, &c., to be true, and there is merely attributed to me *opinions* which in the field of politics might be regarded as heresies, and *expressions* charged upon me which might be characterized as idle, mischievous, and unwise. This suggestion, I need not remind the committee, is not made as palliative upon an admission by me of the truth of any part of these statements, but purely as argumentative and as properly within the scope of my purpose in addressing to them this communication. Guided by this purpose I have in these reflections excluded any denial or admission of anything contained in the papers before the committee, my chief design being accomplished if I shall have succeeded in showing the utter impossibility of making, or even entering upon, a defense of any specific charge or of proffering to rebut evidence when none is presented.

I cannot conclude this brief statement without asserting, as in substance I did in my communication to the Judiciary Committee, that the declarations of my assailants are utterly false in many particulars which might be deemed important, especially the statements of Hull and Law; that the expressions attributed to me in others of the affidavits have been wickedly and maliciously perverted, and that in every respect their declarations are unjust to my real sentiments and at variance with the whole tenor of my life.

Should the committee, however, deem that the public safety and welfare require a formal inquest upon my loyalty and fidelity to the Constitution and Government of my country, I submit with profound respect that justice demands that the general allega-

tions of my assailants should be digested and presented in the form of charges and fiations so that I may have the ordinary and common rights accorded to the hur citizen when arraigned for trial for the most trivial offense.

I remain, sir, your obedient servant,

BENJAMIN STA

Hon. D. CLARK, *Chairman.*

After considering this statement, desirous to know if the Senator had any ft communication for the committee or wished to lay before them any further testi the committee caused a note to be addressed to him, of which the following is a

UNITED STATES SENATE,
Committee Room on Claims, April 14, 18

SIR: At a meeting of the select committee, of which Hon. Mr. Clark is chairman at their room this day, your communication of the 10th instant addressed to the mittee through its chairman was read and considered, after which it was ordered communication be addressed to Mr. Stark requesting him to inform the commit his earliest convenience whether he desires to submit any further testimony or to any further statement to the committee in regard to the matters under investigati

The committee adjourned to Wednesday next at 11 a. m., by which time, if conv to Mr. Stark, an answer is desired.

By direction of the committee.

N. C. TOWLE, *Cl*

Hon. BENJAMIN STARK,
Senator from Oregon.

The committee met again on the 16th of April, when the following note was re from the Senator from Oregon:

SENATE CHAMBER, *April* 15, 18

SIR: In answer to the note of your committee, dated yesterday, I have to state t the absence of information from them as to the course which they deem it to be duty to pursue I have nothing to add to what I have already communicated to the do I propose in the present situation of the subject before them to present any mony.

With great respect, I am your obedient servant,

BENJAMIN STA

The committee then proceeded to consider the allegations and charges contain papers which had been submitted to them by the Senate, in connection with hi and statement, and upon mature deliberation do find the following conclusi the facts proved, viz:

1st. That for many months prior to the 21st November, 1861, and up to that said Stark was an ardent advocate of the cause of the rebellious States.

2d. That after the formation of the constitution of the Confederate States declared his admiration for it, and advocated the absorption of the loyal Sta Union into the Southern Confederacy under that constitution as the only peace, warmly avowing his sympathies with the South.

3d. That the Senator from Oregon is disloyal to the Government of States.

In coming to the foregoing conclusion, the committee cheerfully agree to th of the Senator in his answer, that, "as a Senator of the United States for Oregon, I am entitled to, and I claim, every presumption of honor, integr and patriotism that can be claimed by any other Senator, until such pre overborne by competent testimony;" and they cheerfully accord to him and benefit of such a presumption; at the same time they are forced, w reluctance, to find such presumption overborne by the array of witnesses in regard to his conduct and declarations. Thirteen witnesses, who are n peachable, but are among the most respectable people of the city of Po Mr. Stark resides, testify to the truth of the first of the foregoing propo are William H. Rector, William C. Johnson, C. B. Conelon, A. B. Clough son, Colburn Barrell, Henry Failing, John S. White, W. H. Bamhart, W. Corbet, Simeon Francis, and Samuel E. Barr. They say "Mr. Stark dent here, and personally known to us all, *has been, for the past twelve m advocate of the cause of the rebellious States.*" It may be objected that the not make this statement under oath, and such is the fact; but they *the opinion of* the committee, are entitled to belief. Their character fo

and the positions of some of them, entitle them to it. They gave their testimony months ago, on the 21st November, 1861. It seems to be fair and unprejudiced. They declare that a sense of duty induces them to make their statement. It has been a long time before the Senate; and, although in his communication to the Committee on the Judiciary, dated the 17th January, 1862, the Senator from Oregon declared "that in a forum, competent to try and determine the issue, he should be able to prove the allegations against his loyalty to be utterly unfounded; and that, in many important particulars, the declarations of his assailants were false," yet when an opportunity has been given to the Senator, upon his own motion, to send for persons and papers to disprove these allegations before a committee legally, if not otherwise, competent, the Senator does not desire these witnesses to be put under oath, nor to be re-examined, nor cross-examined; nor does he offer any rebutting testimony, or express a wish that any should be taken; nor does he, in his statement, filed before the committee, so far as the committee remember, attempt to deny or impeach it—for while he says that the statements of Hull and Law are especially false, he makes no such allegation against these thirteen witnesses, or any one of them. He objects to no one of these witnesses because his statement was not made under oath.

These witnesses, however, do not stand alone, nor does the finding of the committee on this proposition rest solely upon testimony given without the sanctity of an oath.

Wesley C. Hull, upon oath, on the 18th November, 1861, says that, in the month of February previous, he heard Mr. Stark make use of the following language: "If there is to be any war between the North and the South, all my property is for sale at fifty cents on the dollar, *and I will go and help the South fight.* The Palmetto flag is my flag; the Southern Confederacy is the only legal government in existence; that the United States Government is broken up; that Jeff. Davis is fighting in a good cause, and it will be impossible to defeat him;" that afterwards upon another occasion he heard the said Stark use the following language: "The United States forces may fight the South from one end of their government to the other, but it will amount to nothing; they will close up behind them, and they cannot be conquered. The South is fighting in a good cause, for government and order, and they cannot be conquered."

Henry Law, also on oath, says that he is acquainted with Mr. Stark; that as early as December, 1860, he heard Mr. Stark say "that he did not go one cent on the Stars and Stripes; that the Palmetto flag was his flag, and if there was any issue between the North and South, he would sell all his property and go South."

A. M. Starr, also under oath, on the 20th November, 1861, declared that within the then last two weeks past he had heard Mr. Stark say that there was no United States Government; and also he heard Mr. Stark say, when the President first called for volunteers, "that the United States Government could not support an army of 30,000 in the field for six months; that the people of the loyal States *would not back up the Administration in trying to put down this rebellion.*"

Thirty other witnesses, likewise under oath, say, on the 15th November, 1861, "that Mr. Stark *is well known* and generally reputed *to be an open and avowed friend to the Southern Confederacy as against the Union.*"

Samuel E. Barr, the magistrate before whom the last-named thirty witnesses made oath, says he is acquainted with each and every one of them, and that they are all men of truth and veracity, and further, that he subscribes to the facts which they stated.

Here are forty-six witnesses, all testifying, materially and directly, to the same substantive fact, to wit, that Mr. Stark has been the advocate of the Southern Confederacy; uncontradicted and unimpeached, except so far as the statement of Mr. Stark may go to that purpose; and the committee are unable to see how a larger number of witnesses could establish the truth of the proposition more firmly. They do not forget, however, that Mr. Stark says that the testimony of two of those witnesses, especially Hull and Law, is false, and he is entitled to any deduction that may be made from their credibility on that account, and to the fact that one of them is evidently mistaken in fixing the time of a particular conversation. They stand, however, with the other witnesses testifying to similar facts, and are uncontradicted by any other person; and the committee can come to no other conclusion than that the facts thus stated by these witnesses are substantially and fully proved, even if the testimony of these two witnesses should be excluded.

The second finding of the committee is proved partly by the declaration of most of these same witnesses, and partly by the distinct and unqualified declaration of the Senator himself to the committee. The same thirteen witnesses above named, in their letter of the 21st November, 1861, say: "He (the Senator from Oregon) has openly avowed his sympathies for the South, declaring the Government disrupted, and openly expressing his admiration for the constitution of the Confederate States, and advocating the absorption of the loyal States of the Union into the Southern Confederacy under that constitution as the only means of restoring peace."

This, these witnesses say, he has done *openly.* The witnesses live in the same city

with him, and there can be no question that they had the means of knowing the conduct, opinions, and declarations of Mr. Stark on these matters.

Mr. Hull testifies, on the 18th November, 1861, that some time after the month of February, 1861, the precise time he does not mention, he heard Mr. Stark say: "The United States forces may fight the South from one end of their government to the other, but it will amount to nothing; they will close up behind them, and they cannot be conquered. The South is fighting in a *good* cause, for government and order, and they cannot be conquered."

Henry Law, on the 20th November, 1861, says he has heard the said Stark say that *he was a secessionist, and all his sympathies were for the South.*

John M. Breck, on the 21st of November, 1861, deposes that he and Mr. Stark live in the same place, and that he is personally acquainted with him; that just after the news of the reverses of the national armies at Bull Run, the affiant being at the time standing at the entrance of the Bank Exchange in the city of Portland, did then and there distinctly hear and see the said Benjamin Stark drink a toast in company *with a well-known secessionist*, to the following effect, viz: "Beauregard," or "Beau-Regard;" that he cannot certainly say that the said Stark alluded to the notorious rebel of that name, but such was his understanding, never having previously heard said Stark use the latter phrase.

It is due to the Senator from Oregon to state that on referring to this testimony before the committee he declared that it was not true. He did not, however, say that the witness was not a truthful man, and worthy of belief under oath, but that he was mistaken, or misunderstood what was said. That he might have drank the toast with some one, and have said, "My regards to you, sir," and that expression been taken for what the witness testifies. But the committee deem it proper to remark, in justice to the witness and to truth, that the witness says "he did then and there *distinctly hear and see* the said Stark, in company with a well-known secessionist, drink the toast," &c. And here is presented a touchstone for ascertaining the truth of the witness's statement. The witness says he drank this toast with a well-known secessionist—and with such a person, the committee submit, he would be likely to drink it if he drank it at all—and this person would know whether or not Mr. Breck is correct in his statement. Mr. Stark had it in his power, and at his option, without expense to him, to have summoned Breck before the committee, and inquired of him who the person was with whom he, Mr. Stark, drank the toast. He then could have summoned that person before the committee and ascertained the truth or falsity of Mr. Breck's statement. Yet this he entirely failed or neglected to do, not because he was unaware of the importance of the testimony, for his attention was attracted to it, and he had taken pains himself to deny it. This testimony, therefore, is entitled to credibility, for the Senator had the means placed at his power of overthrowing it if incorrect, and failed to do so. If, then, this statement of Mr. Breck's be true, how completely and to what extent does it show the sympathies of the Senator were with the rebels! How full of disloyalty must have been the heart of the Senator to the Union cause, thus, in company with a well-known secessionist, exultantly to drink a toast to the man who had planted the batteries against and breached the fortifications of his own Government—and such a Government and who led a host which slaughtered his fellow-citizens, mutilated their dead bodies, and struck with traitorous swords at the heart of the country?

Thirty-one other witnesses, whose names the committee have, say that Mr. Stark is well known and reputed to be an open and avowed friend of the Southern Confederacy as against the Union.

Peter Smith, on the 21st of November, 1861, deposes that Mr. Stark maintained before him that any State had a right to secede from the rest of the Union, * * * and there was no constitutional right to coerce them into submission.

On the 29th of January, 1862, Joseph Lane appeared before the Judiciary Committee of the Senate and testified that in a conversation with Bishop Scott he heard Mr. Stark say that his sympathies were with the South, and that they were right. He does not undertake to give the precise words of the conversation, which occurred in June, 1861. This witness Mr. Stark had the opportunity of cross-examining, and here again he had the opportunity, if Mr. Lane had been mistaken, to have corrected him. He might have called Bishop Scott before the committee and inquired if he had any such conversation with Mr. Stark or heard him make any such declarations, but he neglected entirely the opportunity of ascertaining the truth or of contradicting the testimony against him.

The committee, however, did not rely entirely upon the testimony of witnesses for this finding. Mr. Stark in the presence of the committee, at one of their meetings, distinctly admitted and said that *now* he would be willing that the loyal States should be absorbed under the confederated constitution for the sake of peace.

The committee were equally pained and surprised at such an expression, but could not fail to perceive how pungent a force it gave to much of the testimony against him *nor could they fail* to come to the conclusion, however disagreeable.

Thirdly. That the Senator from Oregon is disloyal to the Government of the United States.

If the first two findings of the committee be correct and the testimony of the witnesses be received and credited, this third finding results almost as a matter of necessity. The Southern Confederacy is the work of rebellion; those who formed it are in arms against the Government of the United States. Its constitution is the product of treason. It is antagonistic, inconsistent, and hostile to the Government of the Union. If rebellion be successful and the Southern Confederacy be established, the Government of the United States must be overthrown and destroyed in nearly one-half its legitimate jurisdiction. Those, therefore, who advocate and support the course of the Southern Confederacy must be deemed opposed to the Government of the United States and disloyal thereto. The truly loyal citizen cannot desire and will not permit a rebellion in any of the States to succeed. Success to the one is the disruption, overthrow, and defeat of the other; especially when the two sections are in arms will the true citizen give all his sympathies, his efforts, and his prayers to the maintenance of a Government which has diffused its blessings so bounteously and so widely as our own. There may be some excuse or palliation for those who, living in rebellious States, are swept away or absorbed by the terrible events there occurring; but there certainly can be none for one who, like the Senator from Oregon, remote from the scene of strife, voluntarily, among a people disposed to be loyal, thus sympathizes with and advocates the cause of rebellion.

By disloyalty the committee mean the want of fidelity to his allegiance to the country, and a disregard of the duty he owes her in this her hour of need and peril.

Now, if it be loyal to advocate the cause of the seceded States, then the Senator from Oregon may be loyal. If it be loyal to sympathize with the rebels, to declare that they are right, and cannot be coerced; to desire for them peace, that they may perfect and carry out their schemes, then may the Senator from Oregon be loyal. If it be loyal not only to express an admiration for the constitution which the rebels have adopted to combine their strength, and make it effectual for the permanent disruption of the American Union and the permanent establishment of their own confederacy, but also to desire the absorption of the other States under it, thus, so to speak, nationalizing treason and making the Government succumb to treason, rather than treason to the Government, then may the Senator from Oregon be loyal. If it be loyal, when the President called for volunteers to save the capital from seizure and suppress rebellion, discouragingly to assert that the United States could not support an army of thirty thousand men, nor would the people sustain the Administration in trying to put down the rebellion; if it be loyal, when the fortifications of the country are battered down by the cannon of domestic foes, and our soldiers are defeated, put to rout and slain, and their dead bodies mutilated and buried, "to drink the health" of the traitor who led the host that perpetrated these enormities, then may the Senator from Oregon be loyal.

But if, as the committee think, such conduct and declarations, at the time when the Government was accepting war as a dire necessity, and struggling for its very existence, could only proceed from a heart sadly and wickedly inclined to sympathize with treason, and show itself false to every duty and deaf to every call of patriotism, then is the finding of the committee fully warranted by the evidence.

"No man can serve two masters." Sympathy with rebellion must shut out patriotism from the heart. It can only exist where the other is not. No man can be true to his country who would do or say aught to aid a conspiracy so wicked, so malignant, so remorseless, and so traitorous as the present rebellion.

The Senator from Oregon cannot be ignorant of the aim and design of the seceding States. They confederated together to break up the Federal Government. They openly proclaimed their determination; and if the Senator aided them by word or deed, he did it with a full knowledge that it was a blow at his country's existence.

The committee do not forget that it is asserted by the Senator that many of the papers referred to the committee are from his bitterest political enemies; and did the findings of the committee rest upon such papers alone, much consideration should be given this statement.

But, turning from these papers of his political enemies to the Senator's own letter to the Democratic mass convention held in Linn County, Oregon, June 5, 1861, the committee find sad evidence of the same spirit animating the contents and dictating the expressions. "Civil war cannot avert disunion;" "Subjugation cannot prolong the Union;" "To subjugate the South, were that even possible, would be the establishment of a military despotism," are expressions found in this letter, and so marvelously like many of those attributed by the witnesses to the Senator that there is no difficulty in believing that they all belong to the same family and have a common parent. And they all are calculated to *encourage the rebellion*, and *discourage the efforts* to suppress it. Whoever may read this letter, mutilated as it is, keeping in mind that it was written about

the time he is said to have uttered the expressions attributed to him by the witnesses, will the more readily believe that the statement of the witnesses closely accords with the evidence furnished by the Senator himself.

Indeed, this letter of June, 1861, and the statement of the Senator to the committee have added much to the weight of the other proof. The first tallies in sentiment and spirit with the witnesses; the other, though made when the Senator was under an accusation of disloyalty in papers referred to the committee upon his own motion, and though the committee by inviting that statement intended to give the Senator an opportunity to express his sympathy with his suffering country and menaced Government, and to remove so far as he could in that way any impeachment of his loyalty, is as barren of all such expressions as a bill of indictment. There is not in it a paragraph, nor a sentence, nor a line such as must spontaneously have burst out from a loyal heart under such an accusation. True, he speaks of being entitled to the presumptions of loyalty, but there is no manly declaration of any determination to stand by the country in weal or woe or to give life or fortune or any assistance whatever to her requirements. In Oregon he was frequent and open in his expressions of sympathy for the rebels. He was, say the witnesses, the advocate of their cause. But here he is as silent as the grave. Though accused of disloyalty, though the country "bleeds at every pore," though she imploringly raises her hands to him in his high place for aid and succor—he has never a word in his statement, nor an expression, sentence, or line from which a drop of sympathy can be wrung, unless it be in his assertion that "in every respect their declarations are unjust to my real sentiments and at variance with the whole tenor of my life."

What those sentiments are he does not tell us, nor have the committtee any means of knowing by any evidence before them. If he had declared them to the committee, asserting his loyalty to the Government, the committee would have given him the full benefit of them; and perhaps they might have gone far to have removed the unfavorable conclusions to which the committee have come. But in the absence of any such declarations the committee could only pass on the evidence that was before them, giving him the full benefit of every presumption that can arise in his favor, and of every deduction that should be made for a conflict of testimony.

"He that is not for us is against us" are the words of inspiration, and never more applicable than on occasions like the present. It is quite true the Senator was under no obligation to use any such expressions in his statement, but the committee cannot but believe that had the feelings existed which would have prompted them they could not have been confined in a patriotic heart—they would have found expression.

Upon taking his seat in the Senate, the Senator took the oath to support the Constitution of the United States; and it may be objected he would not have done so if not loyal to the Government. What were the reservations, what the limitations or interpretations, with which the Senator took that oath the committee do not inquire; for the Senator does not assert that his feelings and views have changed since the witnesses testified. He does not pretend that he is more loyal now than when he declared his sympathies were with the South, that they were right and could not be coerced. And the committee remember and know that in their presence, since the taking of that oath, and since the institution of this inquiry, the Senator boldly and without condition declared he would be willing the loyal States should be absorbed under the constitution of the Confederacy for the sake of peace—that is, that the Constitution of our fathers, which he had just sworn to support, should be cast out of its rightful inheritance by this bastard sprout of a gigantic rebellion, which should "reign in its stead."

Could the traitors desire more, to wit, peace and the adoption of *their* government?

It is the aim of their efforts; their avowed intent and purpose. No man can yield it, unless compelled by dire necessity, and not be liable to an impeachment of his loyalty.

All true lovers of the country desire peace, but he who would seek it through its destruction and overthrow must be either a craven or disloyal citizen.

The committee are, therefore, compelled to dismiss this consideration, and adopt the foregoing findings; adding that the appearance of the Senator before the committee, his singular declarations, statements, and conduct, have done much to strengthen the last conclusion of the committee.

Itwould have been far pleasanter to them not to have done so, and they hoped, upon entering upon this investigation, the Senator would have made such proofs and statements as would have removed from him all suspicion of disloyalty. But he has failed to do so, and the duty was left to the committee to judge only upon what was before them. From that duty there could be no shrinking in a time like this; and the committee have endeavored to discharge it thoroughly and fearlessly, and now submit their conclusions to the Senate.

DAN'L CLARK.
J. M. HOWARD.
JOSEPH A. WRIGHT.
JOHN SHERMAN.

Concurring in the first two conclusions of the majority of the committee, I am yet constrained, not without hesitation, to differ with them in their third and last conclusion. Distrusting all *ex parte* testimony, especially in regard to expressions uttered in the heat of high political excitement, seeing that the sentiments and opinions thus attributed to Mr. Stark are virtually denied and repudiated by him in his written statement before the committee; remembering that since it is alleged those conversations took place, and those expressions were uttered, Mr. Stark, in taking his seat as a Senator, has purged himself of these sinister allegations by taking the oath to support the Constitution of the United States, and especially fearing the danger of making mere difference of opinion, however wide and fundamental, a test of fidelity to the Government, I am not prepared to say that Mr. Stark *is now disloyal.*

W. J. WILLEY.

WEDNESDAY, *May* 7, 1862.

Mr. Sumner submitted the following resolution for consideration:

"*Resolved*, That Benjamin Stark, a Senator from Oregon, who has been found by a committee of this body to be disloyal to the Government of the United States, be, and the same is hereby, expelled from the Senate."

[The debate is found on page 1983 of the Congressional Globe, part 3, 2d sess. 37th Cong.]

FRIDAY, *June* 6, 1862.

On motion by Mr. Sumner that the Senate proceed to the consideration of the resolution submitted by him for the expulsion of the Hon. Benjamin Stark from the Senate, it was determined in the negative—yeas 16, nays 21.

On motion by Mr. Saulsbury, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Chandler, Clark, Foot, Grimes, Harlan, Howe, Lane of Kansas, Morrill, Pomeroy, Sumner, Trumbull, Wade, Wilkinson, Wilmot, Wilson of Massachusetts, and Wright.

Those who voted in the negative are Messrs. Anthony, Bayard, Browning, Carlile, Cowan, Davis, Dixon, Fessenden, Foster, Hale, Harris, Kennedy, Latham, McDougall, Nesmith, Powell, Rice, Saulsbury, Simmons, Ten Eyck, and Willey.

[Thirty-seventh Congress—Second session.]

LAZARUS W. POWELL,

Senator from Kentucky from March 4, 1859, *till March* 3, 1865.

February 20, 1862, a resolution was submitted that Mr. Powell be expelled from the Senate. It was accompanied by a preamble setting forth certain conduct of Mr. Powell, which, it stated, showed that "his purposes, if not his acts, were treasonable." The resolution was referred to the Committee on the Judiciary. March 12, 1862, the committee reported back the resolution with the recommendation that it do not pass. No report showing the grounds on which the committee proceeded was made. From remarks by the chairman of the committee, given below, it appears that nothing was shown to satisfy the committee that Mr. Powell had done anything to favor the cause of the rebellion; that his opinions differed from the opinions of the speaker, but that no man was to be expelled because he disagreed with others in opinion. March 14 the resolution was not agreed to by a vote of 28 nays to 11 yeas.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 2d sess. 37th Cong., and remarks by Mr. Trumbull from Congressional Globe, part 2, 2d sess. 37th Cong., page 1234.

Special references to the debates of each day are inserted below.

THURSDAY, *February* 20, 1862.

Mr. Wilkinson submitted the following resolution; which was considered by unanimous consent, referred to the Committee on the Judiciary, and ordered to be printed:

"Whereas Lazarus W. Powell, a Senator from the State of Kentucky, after eleven States had published their ordinances of secession by which to sever themselves from the Government of the United States, had formed a confederation and provisional government, and made war upon the United States, did, on the 20th day of June last, at the city of Henderson, in the State of Kentucky, attend a large Southern State's rights convention, over which he was called to and did preside; and, on taking his seat as president thereof, made a speech, in which he stated the object of said convention, and then appointed a committee, which reported to said convention a long series of resolutions that were unanimously adopted by it. Among those resolutions are the following:

"'2. That the war being now waged by the Federal Administration against the Southern States is in violation of the Constitution and laws, and has already been attended with such stupendous usurpations as to amaze the world and endanger every safeguard of constitutional liberty.

* * * * * * *

"'That the recall of the invading armies and the recognition of the separate independence of the Confederate States is the true policy to restore peace and preserve the relations of fraternal love and amity between the States.

* * * * * * *

"'6. That we heartily approve the refusal of Governor Magoffin to furnish Kentucky troops to subjugate the South; and we cordially indorse his recent proclamation defining the position of Kentucky, in accordance with the sentiment of her people, and *forbidding* the *invasion* of *Kentucky* by *Federal* or confederate troops.

"'7. That, although Kentucky has determined that her proper position *at present* is that of strict neutrality between the belligerent sections, yet, if either of them invade her soil against her will, she ought to *resent* and *repel* it by *necessary force*.'

"The pith of Governor Magoffin's proclamation, which that convention so cordially approved, is embodied in this paragraph: 'I hereby notify and warn all other States, separate or united, especially the United and Confederate States, that I solemnly forbid any movement upon Kentucky soil, or occupation of any part or place therein, for any purpose whatever, until authorized by invitation or permission of the legislative and executive authorities. I especially forbid all citizens of Kentucky, whether in the State guard or otherwise, from making any hostile demonstration against any of the aforesaid sovereignties; to be obedient to the orders of lawful authorities; to remain quietly and peaceably at home when off of military duty, and refrain from all words and acts likely to provoke a collision, and so otherwise to conduct themselves that the deplorable calamity of invasion may be averted; but, in the mean time, to make prompt and efficient preparation to assume the paramount and supreme law of self-defense, and strictly of self-defense alone.'

"The closing speech of this convention was made by Senator Powell, and the resolutions passed by it and a summary statement of its proceedings were signed by him as its president.

"On the 10th of September last, whilst the legislature of Kentucky was in session in the town of Frankfort, and after her territory had been invaded at two distant points by the confederate armies, and whilst Humphrey Marshall was employed in organizing and drilling an armed body of rebels in the contiguous county of Owen, a large Southern State's rights convention assembled and held its sessions in Frankfort, for the apparent purpose of overawing the legislature, controlling its deliberations, and deterring it from passing measures to support the Union and the Government of the United States, Lazarus W. Powell was a delegate to that convention from the county of Henderson, and was appointed on its committee of resolutions. Among other resolutions, that committee reported these:

"'*Resolved*, That every material interest of Kentucky, as well as the highest dictates of patriotism, demand that peace should be maintained within her borders, and this convention solemnly pledges the honor of its members to do all in their power to promote this end.

"'2. That it is the deliberate sense of this convention, and it is believed of an overwhelming majority of the people of Kentucky, that the best and perhaps the only mode of effecting this great object is by adhering strictly, rigidly, and impartially to her chosen and oft-declared position of neutrality during the existence of the deplorable war now raging between the sections; taking sides neither with the Government nor with the seceding States, and declaring *her soil* must be *preserved inviolate* from the *armed occupation* of either.

* * * * * * *

"'9. That we consider it incompatible with the neutrality avowed by Kentucky to vote money for the prosecution of the civil war, or to tax the people of the State, or augment its debt for a purpose so unwise and for a cause so hopeless as the military subjugation of the Confederate States.'

"This was a convention of most intense secessionists, and was attended by John C. Breckinridge and many of the leaders of that party from generally over the State. William Preston and R. W. Wooley, esquires, made speeches to it fraught with the rankest treason, and denouncing the fiercest war against the United States. Its resolutions were unanimously adopted, and its business closed with the following one, offered by Senator Powell:

"'*Resolved*, That Col. William Preston, George W. Johnson, esq., General Lucius Desha, Capt. Richard Hawes, and Thomas P. Porter, esq., be, and they are hereby, appointed a committee of organization, in order to carry out the purposes of this convention; and full powers are conferred upon them for that object.'

"Those men were thus commissioned in the cause of conspiracy, treason, and rebellion. By the warrant given them, on the motion of Senator Powell, they went forth and organized or advised and assisted in the organization of armed bands of traitors, and soon thereafter led them into the confederate camps, where they are yet struggling to consummate the disruption of the Union and the overthrow of the Constitution and laws of the United States. From the beginning of this great rebellion to the present time Senator Powell has neither done nor said anything in Congress or out of Congress to strengthen or sustain the United States in this mighty struggle for national life. Whilst the true and loyal men of his own State were engaged in an arduous and protracted struggle to bring her to perform her duty to the nation and its government, he not only withheld from them all assistance and sympathy, but gave to the rebels the moral force of his disloyal position and opinions, and all the aid and comfort which he could render them short of the commission of technical treason. His purposes, if not his acts, have been treasonable. Being an ex-governor of the State of Kentucky, and one of her Senators in Congress, his example and counsel have doubtless been potential with her people and of mischievous tendency in other States. Under the false and delusive cry of neutrality and peace, and the absurd purpose to protect the soil of the State against invasion from the military force of the United States, he has doubtless assisted to seduce hundreds and hundreds from loyalty and duty into rebellion and treason. He has not supported the Constitution of the United States, but he has sounded the charge to his recruits, and they have made the overt attack upon it. Wherefore—

"*Be it resolved*, That the said Lazarus W. Powell be, and he is hereby, expelled from the Senate."

* * * * * * *

Mr. Wilkinson presented papers in relation to the resolution submitted by him this day for the expulsion of the Hon. Lazarus W Powell from the Senate; which were referred to the Committee on the Judiciary.

FRIDAY, *March* 7, 1862.

[Remarks on the resolution are found on pages 1112, 1113 of the Congressional Globe, part 2, 2d sess. 37th Cong.]

WEDNESDAY, *March* 12, 18

Mr. Trumbull, from the Committee on the Judiciary, to whom was referred the lution submitted by Mr. Wilkinson on the 20th of February for the expulsion o Hon. Lazarus W. Powell from the Senate, reported it without amendment, and w recommendation that the resolution do not pass.

THURSDAY, *March* 13, 18

The Senate proceeded to consider the resolution for the expulsion of the Hon. La W. Powell from the Senate; and

After debate,

On motion by Mr. Powell,

Ordered, That the further consideration of the resolution be postponed to to-mo at 1 o'clock.

[The debate is found on pages 1208–1216 of the Congressional Globe, part 2, 2d 37th Cong.]

FRIDAY, *March* 14, 18

The Senate resumed the consideration of the resolution to expel the Hon. Lazaru Powell from the Senate; and

After debate,

On the question to agree to the resolution, as follows:

"*Resolved*, That the said Lazarus W. Powell be, and he is hereby, expelled fro Senate,"

It was determined in the negative—yeas 11, nays 28.

Those who voted in the affirmative are Messrs. Davis, Dixon, Harlan, Howard, H Lane of Indiana, Pomeroy, Sumner, Ten Eyck, Wade, and Wilkinson.

Those who voted in the negative are Messrs. Anthony, Browning, Carlile, C Cowan, Doolittle, Fessenden, Foot, Foster, Hale, Harris, Henderson, Kennedy, I Lane of Kansas, Latham, McDougall, Nesmith, Pearce, Rice, Saulsbury, Stark, T son, Trumbull, Willey, Wilson of Massachusetts, Wilson of Missouri, and Wright.

So the resolution was not agreed to.

[The debate is found on pages 1230–1234 of the Congressional Globe, part 2, 2d 37th Cong.]

[Remarks of Mr. Trumbull, of Illinois, March 14, 1862.]

"I consider it due to the committee, whose organ I was in reporting adversely t passage of this resolution, simply to state, not by way of argument, or of prov reply, the ground upon which the committee reported adversely to the passage o resolution. It was not because the committee approved of the doctrine of neutrali Kentucky. In my judgment that was a most mischievous position, and one w untenable, either in April, or June, or September; but it is known that the peo Kentucky very generally assumed that ground, and the Government of the United S if they did not recognize the neutrality of Kentucky, we may at least say paid respect to it. The resolutions that were adopted, in which they declared tha United States had no right to pass its troops over the soil of Kentucky, were, i judgment, preposterous. It was downright opposition to the constituted authorit the Government; wholly unjustifiable. I have no excuse for it. I think it is wi excuse. But, sir, such was the position of the great body of the people of that S and many persons now believe that it was owing to this position of neutrality w was then assumed that Kentucky has at last arrayed herself on the side of the U I do not think so; but good Union men doubtless did take that position.

'Well, sir, the time came when, notwithstanding Kentucky had assumed this attitude, it was necessary that her people should take sides either with the Govern or against those arrayed for its protection. Some men who got upon this neutrality form left it sooner than others; some in June, if you please; some earlier; some on it till September; but when the time came that Kentuckians had to meet this face to face, go with the Government or against it, fight for one or the other, then the traitors arrayed themselves, and undertook to get up a provisional governme the State of Kentucky. Breckinridge and the traitors alluded to by the Senat my right [Mr. Davis] went into the organization; they joined the rebels; the Se from Kentucky, whose case is under consideration, came here—came to the Govern of the United States to discharge his duties here. He does not agree with me in timent; his opinions are not my opinions; I do not agree with the views that h so often announced here; but he is entitled to his own opinions; and no man is expelled from this body because he disagrees with others in opinion. Since Kent assumed this position and took sides with the Union nothing has been shown to s the committee, at least, that the Senator from Kentucky has had any communic or done anything to favor the cause of the rebellion. I think neutrality did fav *but, sir, that is now over.*"

[Thirty-seventh Congress—Second session.]

JAMES F. SIMMONS,

Senator from Rhode Island from March 4, 1841, *till March* 3, 1847, *and from March* 4, 1857, *till he resigned in August*, 1862.

July 2, 1862, near the end of Mr. Simmons's second term in the Senate, a resolution was submitted that he be expelled from the Senate. The preamble stated that it appeared from a report of the Secretary of War that Mr. Simmons had exercised his official influence over certain of the heads of the Departments in procuring an order authorizing a certain person to manufacture rifles in behalf of the Government for the Army and Navy, and that Mr. Simmons had agreed to receive as a compensation for such services the sum of $50,000, and that he had already received two promissory notes amounting to $10,000. July 8 the resolution was referred to the Committee on the Judiciary by a vote of 31 yeas to 7 nays. July 14 the committee reported that the facts were substantially as above given, and that they were of opinion that "such a practice is entirely indefensible, and that it was highly improper for a Senator of the United States to have acted thus, even when the Government sustained no loss thereby;" that it was manifest that Congress disapproved of such conduct from the fact that they had promptly passed a law making it a penal offense thereafter; but that to visit a severe penalty upon an act which at the time of its commission was not punishable or forbidden by public law would be retroactive in its effect, and render the step liable to that objection to which all *post facto* laws are justly subject. The committee unanimously reported back the resolution, accompanied by the statement of facts, that the Senate might take such action as they might think fit. No action was taken. [Congress adjourned within three days after the report was made, and Mr. Simmons had resigned his seat in the Senate before the next session.]

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 2d sess. 37th Cong., with the report of the committee from Senate Reports, 2d sess. 37th Cong., No. 39.

The case was not debated.

WEDNESDAY, *July* 2, 1862.

Mr. Wright submitted the following resolution for consideration:

"Whereas, by a report made to the Senate of the United States by the Secretary of War, the Hon. E. M. Stanton, bearing date June 21, 1862, it appears that the Senator from the State of Rhode Island, James F. Simmons, gave and exercised his official influence over certain of the heads of the Departments of our Government in procuring for one C. D. Schubarth an order, dated October 11, 1861, authorizing the said Schubarth, in behalf of the Government, to manufacture, for the use of the Army and Navy, 50,000 breech-loading rifles; and, further, that the said Senator did agree to receive, as a compensation for services rendered in such procurement, the sum of $50,000, and did subsequently accept two several promissory notes from certain parties in New York, 'one payable in August, and one in September next, both amounting to $10,000,' in payment for procuring said order: Therefore,

"*Resolved*, That the said James F. Simmons be, and is hereby, expelled from the seat he holds in this Senate."

TUESDAY, *July* 8, 1862.

On motion by Mr. Wright, the Senate proceeded to consider the resolution submitted by him on the 2d instant for the expulsion of the Hon. James F. Simmons, a Senator from the State of Rhode Island, from the Senate; and,

On motion by Mr. Ten Eyck that the resolution be referred to the Committee on the Judiciary, it was determined in the affirmative—yeas 31, nays 7.

On motion by Mr. Wright, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Browning, Carlile, Chandler, Clark, Collamer, Cowan, Davis, Doolittle, Fessenden, Foot, Grimes, Hale, Harlan, Harris, Howard, Howe, Kennedy, Lane of Kansas, McDougall, Morrill, Rice, Sherman, Stark, Sumner, Ten Eyck, Wilkinson, Willey, Wilmot, Wilson of Massachusetts, and Wilson of Missouri.

Those who voted in the negative are Messrs. Foster, Henderson, King, Nesmith, Powell, Trumbull, and Wright.

So the motion was agreed to, and it was

Ordered, That the resolution be referred to the Committee on the Judiciary.

MONDAY, *July* 14, 1862.

Mr. Ten Eyck, from the Committee on the Judiciary, to whom was referred a resolution to expel the Hon. James F. Simmons, a Senator from the State of Rhode Island, from the Senate, submitted a report (No. 69); which was ordered to be printed.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Trumbull (chairman), Foster, Ten Eyck, Cowan, Harris, Bayard, and Powell.]

IN THE SENATE OF THE UNITED STATES.

JULY 14, 1862.—Ordered to be printed.

Mr. Ten Eyck submitted the following report:

The Committee on the Judiciary, to whom was referred a resolution for the expulsion of James F. Simmons, a Senator of the United States from the State of Rhode Island, have had the same under consideration, and, after full deliberation, make the following report:

That in October, 1861, Senator Simmons being in Washington on his own private business, was called upon by a Mr. Schubarth with a letter of introduction from Messrs. A. D. & J. Y. Smith, a wealthy business firm in Providence, Rhode Island, requesting him to aid Mr. Schubarth in procuring an order from the Government for the manufacture of a breech-loading rifle for the use of the Army and Navy, of which he was the inventor, and stating that if the order was procured they (the Messrs. Smith) were to be concerned in its execution.

Mr. Schubarth was introduced by Senator Simmons to the Secretary of War, General Ripley, of the Ordnance, and Captain Harwood, of the Navy Department. His rifle was tried at the navy-yard, and a favorable report made, but the Government declined ordering his breech-loading rifle, and, preferring the Springfield rifled muskets, gave an order on the 11th of October last for 20,000, at the rate of $20 for each arm, with the appendages.

When called upon by Mr. Schubarth with the letter of the Messrs. Smith, as above stated, Mr. Simmons determined to aid him in procuring the order for the manufacture of the rifle invented by him, by going with him to the Departments, recommending his arm, and soliciting a contract in the same manner as he had done before in other cases, and has since done in behalf of constituents of his without any offer of compensation having been made to him for his aid, and without expecting or dreaming of receiving any. That after he had thus undertaken to assist Mr. Schubarth, either before or after he had introduced him at the Departments, (Mr. Simmons thinks it was after and some time during the stay of Mr. Schubarth in Washington, while going to or returning from the Departments,) Schubarth said he had a letter from the Messrs. Smith authorizing him to pay a commission for obtaining an order, which he offered to Mr. Simmons to be read, but which he declined reading, saying, playfully, "that the Messrs. Smith were rich enough to pay, and that if he got commissions for all he did for his constituents he should be as rich as some of them were;" but it appears that no suggestion was made to Mr. Simmons to pay him a commission or compensate him in any way for any aid he might render until after he had determined to assist the parties in getting the contract; and that nothing further ever passed between Mr. Simmons and the Messrs. Smith on the subject of commissions.

That afterwards, in November, 1861, Mr. Simmons being in Washington, on his way to Hatteras Inlet, for the purpose of consulting the Government about procuring a vessel load of cotton, Mr. Schubarth informed him that he could do nothing with the order he had obtained unless it was made for the same number and as long a time allowed for delivery as other parties had, and requested him to aid in getting such alteration, which he did; and on the 26th of November last an additional order was made for the manufacture of 30,000 more.

In January last, Mr. Schubarth informed Mr. Simmons that the Messrs. Smith declined pursuing the business. And seeing him afterwards in February, in New York, Schubarth told him he had made arrangements with other parties for means to carry out the contract, and that they wanted to have an understanding with him about his commissions. Mr. Simmons states that he saw these parties, and took from them an agreement, in writing, to pay at certain stipulated times (in about a year from May last) the amount agreed upon. The agreement was without qualification or condition, and had no connection with what the Government might subsequently do, only binding themselves to a due execution of the order on their part. Under and in pursuance of this agreement they subsequently gave him one note, payable in August, and one in September next, both amounting to $10.000, which he expected would be paid, as he had no doubt of their responsibility.

Mr. Simmons further states that he never expected Schubarth to pay him a cent for the assistance he rendered him; that he was in moderate circumstances; that the Smiths were rich and that he expected them to pay; and that he should have aided jus

as soon, and acted as earnestly in endeavoring to procure the orders, without compensation, as he had repeatedly done in other cases for his constituents. Mr. Schubath states, on the contrary, that he considers himself bound to give Senator Simmons 5 per cent. commission on both orders, and he says he made the offer of commissions to Senator Simmons because he had understood that a commission was paid for obtaining contracts, and he thinks it was one of the Messrs. Smith who told him so. It may not be amiss to state that Mr. Simmons, who has appeared before the committee and with great frankness and fairness detailed all the circumstances of the transaction, and answered all questions put to him promptly and without hesitation, also stated that he is now, and was at the time, unconscious of having done anything wrong in acting as he did, and that he was not aware that it was unlawful, there being no law prohibiting it; that he considered he was not only benefiting his constituents, but was also doing the Government a service by procuring for it responsible contractors for the prompt supply of arms, which was then so greatly needed, he having about that time learned in high quarters that although 500,000 men had recently been called to the field, the Government had then only 200,000 stand of arms to put in their hands.

It further appears that Senator Simmons still holds the notes given him for these commissions as agreed upon, and expects to receive payment on them when they fall due.

It also appeared to the committee that both before and after the contract for these arms was made, many other contracts were made for similar arms, between July 1, 1861, and January 1, 1862, and the lowest price paid by the Department for arms of this description was $20, the price agreed to be paid to Mr. Schubarth; that $20 was the lowest bid that was made at the Department for the manufacture of such arms during the periods aforesaid, and that the Government lost nothing in consequence of the offers of Mr. Schubarth to pay Mr. Simmons a commission for his assistance in this particular, after he had voluntarily undertaken to assist in procuring the contract without reward.

The committee on these facts are of opinion that although Senator Simmons may have thought, as he declares, that his act was neither unlawful or wrong (a declaration which his age, respectability, and long, useful, and honorable life, it would seem, should favor, whilst it is true that these very considerations should make a willful departure from the line of correct conduct more glaring and censurable), still, that such a practice is entirely indefensible, and that it was highly improper for a Senator of the United States to have acted thus, even where the Government sustained no loss thereby; but especially at a time when the very existence of the Government and the Union was endangered by a fierce and huge rebellion, to suppress which the patriotism of the country was everywhere engaged—a rebellion which, first by robbery and afterward by occasioning unlimited requisitions for the purchase of supplies and arms, had subjected the public treasury to untold and frightful drains.

That Congress disapproves of such conduct is manifest from the fact that they have promptly passed a law making it a penal offense hereafter; this will prevent all such acts in future; but to visit a severe and striking penalty upon an act which at the time of its commission was not punishable or forbidden by any public law would be retroactive in its effect, and render the step liable to that objection to which all *post facto* laws are justly subject.

The committee would further state in this connection that it was the common practice until a recent period for members of Congress to prosecute claims against the Government for fees and rewards, and that for many years our most distinguished public men were in the habit of prosecuting claims under such circumstances without censure or criticism; but this was made a misdemeanor by an act of Congress in 1853, and since that period the practice has been discontinued.

The committee unanimously report back the resolution, accompanied by the statement of facts herein contained (about which there appears to be no dispute), in order that the Senate may take such action in the matter as they in their wisdom and discretion may think fit.

[Thirty-eighth Congress and first session Thirty-ninth Congress.]

WILLIAM M. FISHBACK, ELISHA BAXTER, AND WILLI D. SNOW,

of Arkansas.

May 21, 1864, the credentials of Mr. Fishback, elected to fill the unexpired term, ending M 1865, of William K. Sebastian, expelled, were presented; and May 31 the credentials of Mr. E elected to fill the unexpired term, ending March 3, 1867, of Charles B. Mitchell, expelled, we sented. June 13, the oath of office not having been administered, their credentials were re to the Committee on the Judiciary. At the same time a joint resolution for the recognition free State government of the State of Arkansas, which had been presented to the Senate J was referred to the committee. June 27, the committee reported in regard to the election Senators substantially as follows: August 16, 1861, the President had declared the inhabit Arkansas, except those of such parts thereof as should maintain a loyal adhesion to the Un might be from time to time occupied and controlled by United States forces, to be in a state surrection. At the date of the proclamation no part of the State was occupied and control forces of the United States, nor did the inhabitants of any part of the State publicly mai loyal adhesion to the Union. Hence at that time a state of civil war existed between the in ants of Arkansas and the United States, and there was not then any organized authority com to elect Senators of the United States. It is claimed, however, that since that period the g portion of the State has been thus occupied, and that the inhabitants, loyal to the Union reorganized their State government, and have a right through their legislature to choose Se The question to be determined by the Senate is, Was the body electing Messrs. Fishbac Baxter the legislature of Arkansas? Less than one-fourth of the number of persons who vo President in 1860 took part in the reorganization of the State government. This, however, not be fatal to the reorganization if the State was free from military control, which is not th At the time the claimants were elected, and at this time, the State is occupied by hostile a While this state of things continues, and the right to exercise armed authority is claimed a erted by the military power, it cannot be said that a civil government, set up and continue by the sufferance of the military, is that republican form of government which the Consti requires the United States to guarantee to every State in the Union. When the rebellio have been so far suppressed in the State that the loyal inhabitants thereof shall maintain a government by the aid of and not in subordination to the military, they shall then and not be entitled to representation in Congress. The committee recommend the adoption of the f ing resolution: "*Resolved*, That William M. Fishback and Elisha Baxter are not entitled t as Senators from the State of Arkansas." This resolution passed the Senate June 29, 1864, by of 27 yeas to 6 nays.

The joint resolution above referred to was reported adversely at the same time that the rep the credentials was presented. In the next session of Congress a similar joint resolution wa mitted and referred to the same committee, but was not reported. The proceedings of the relating to these joint resolutions are not included in the extracts given below.

March 7, 1865, the credentials of Mr. Snow, elected for the term succeeding that for whic Fishback had been elected, were presented and referred to the Committee on the Judiciary. committee recommended that the question be postponed to the next session, and until Co should take action in regard to the recognition of the alleged existing State government i ansas. No action was taken. February 26, 1866, the credentials of Messrs. Baxter and having been taken from the files of the Senate, a motion was made that they be referred ag the committee. It was ordered that they lie on the table. No further action was taken credentials.

The history of the case here given consists of a transcript of the proceedings of the Senate ing to it from Senate Journals, 38th Cong. and 1st sess. 39th Cong.; the report of the commit on the credentials of Messrs. Fishback and Baxter from Senate Reports, 1st sess. 38th Cong. (N the report on the credentials of Mr. Snow from Senate Reports, 2d sess. 38th Cong. (No. 1, s session); also the proceedings of the Senate from the Journals relating to the payment of m to the claimants.

Special references to the debates of each day are inserted below.

[First session of the Thirty-eighth Congress.]

CREDENTIALS OF MESSRS. FISHBACK AND BAXTER.

SATURDAY, *May* 21, 18

Mr. Lane, of Kansas, presented the credentials of the Hon. William M. Fishl elected a Senator of the United States by the legislature of the State of Arkansas t the unexpired term of the Hon. William K. Sebastian, who was expelled by a resol of the Senate of July 11, 1861; which were read.

On motion by Mr. Conness that the credentials be referred to the Committee o Judiciary,

Ordered, That the further consideration thereof be postponed to to-morrow.

WEDNESDAY, *May* 25, 1864.

The Senate resumed the consideration of the motion submitted by Mr. Conness, the 21st instant, to refer the credentials of the Hon. William M. Fishback to the Committee on the Judiciary; and

On motion by Mr. Fessenden,

Ordered, That the further consideration thereof be postponed to to-morrow.

[The debate is found on pages 2458, 2459 of the Congressional Globe, part 3, 1st sess. 38th Cong.]

TUESDAY, *May* 31, 1864.

Mr. Foot presented the credentials of the Hon. Elisha Baxter, elected a Senator of the United States by the legislature of the State of Arkansas to fill the unexpired term of the Hon. Charles B. Mitchell, who was expelled by a resolution of the Senate July 11, 1861.

The credentials were read.

Ordered, That they lie on the table.

MONDAY, *June* 13, 1864.

On motion by Mr. Lane, of Kansas, that the joint resolution, together with the credentials of the Hon. William M. Fishback and the Hon. Elisha Baxter, Senators-elect from the State of Arkansas, be referred to the Committee on the Judiciary.

* * * * * * *

On the question to agree to the motion of Mr. Lane, of Kansas,

After debate,

On motion by Mr. Wade that the joint resolution and the credentials lay on the table, it was determined in the negative—yeas 5, nays 32.

On motion by Mr. Lane, of Kansas, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Chandler, Howard, Richardson, Sumner, and Wade.

Those who voted in the negative are Messrs. Anthony, Brown, Buckalew, Clark, Conness, Davis, Doolittle, Fessenden, Foot, Foster, Grimes, Harlan, Harris, Hendricks, Howe, Johnson, Lane of Indiana, Lane of Kansas, McDougall, Morgan, Morrill, Pomeroy, Powell, Ramsey, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Wilkinson, Willey, and Wilson.

On the question to agree to the motion of Mr. Lane, of Kansas, it was determined in the affirmative.

So it was

Ordered, That the joint resolution, with the credentials of the Hon. William M. Fishback and the Hon. Elisha Baxter, be referred to the Committee on the Judiciary.

* * * * * * *

Mr. Lane, of Kansas, presented a proclamation of Major-General Steele, commanding the Department of Arkansas, declaring that peace has been so far restored in Arkansas as to enable the people to institute proceedings for the restoration of the civil government, and issuing regulations for an election to be held for the adoption or rejection of the State constitution adopted by the convention of citizens of that State; which was referred to the Committee on the Judiciary, and ordered to be printed.*

[The debate is found on pages 2895–2907 of the Congressional Globe, part 3, 1st sess. 38th Cong.]

TUESDAY, *June* 21, 1864.

Mr. Lane, of Kansas, presented a letter† of William M. Fishback, addressed to him, giving a detailed account of his conduct during the present rebellion, and defending himself against charges of disloyalty; which were referred to the Committee on the Judiciary, and ordered to be printed.

MONDAY, *June* 27, 1864.

Mr. Trumbull, from the Committee on the Judiciary, to whom were referred the credentials of the Hon. William M. Fishback and the Hon. Elisha Baxter, elected Senators of the United States by the legislature of the State of Arkansas, submitted a report (No. 94), accompanied by the following resolution:

"*Resolved*, That William M. Fishback and Elisha Baxter are not entitled to seats as Senators from the State of Arkansas."

On motion by Mr. Trumbull,

Ordered, That the report be printed.

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*This proclamation is found in Senate Miscellaneous, 1st sess. 38th Cong., No. 124.

†This letter is found in Senate Miscellaneous, 1st sess. 38th Cong., No. 129.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Trumbull (chairman), Foster, Ten Eyck, Harris, Howard, Bayard, and Powell.]

IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1864.—Ordered to be printed.

Mr. Trumbull submitted the following report:

The Committee on the Judiciary, to whom were referred the credentials of William M. Fishback and Elisha Baxter, claiming seats from the State of Arkansas, report:

That the credentials presented are in due form, purporting to be under the seal of the State of Arkansas, and to be signed by Isaac Murphy, governor thereof; and if the right to seats were to be determined by an inspection of the credentials Messrs. Fishback and Baxter would be entitled to be sworn as members of this body. It is, however, admitted by the persons claiming seats, and known to the country, that in the spring of 1861 the State of Arkansas, through its constituted authorities, undertook to secede from the Union, set up a government in hostility to the United States, and maintain the same by force of arms. Congress, in view of the condition of affairs in Arkansas and some other States similarly situated, passed an act July 13, 1861, authorizing the President, in case of an insurrection in any State against the laws of the United States, and when the insurgents claimed to act under the authority of the State, and such claim was not repudiated, nor the insurrection suppressed by the persons exercising the functions of government in such State, to declare the inhabitants of such State, or part thereof where such insurrection existed, to be in a state of insurrection against the United States; and that thereupon all commercial intercourse by and between the same and the citizens of the United States, except under license and upon certain conditions, should cease and be unlawful so long as such condition of hostility should continue.

In pursuance of this act the President, August 16, 1861, issued his proclamation declaring the inhabitants of the State of Arkansas, except the inhabitants of such parts thereof as should maintain a loyal adhesion to the Union and the Constitution, or might be from time to time occupied and controlled by forces of the United States engaged in the dispersion of said insurgents, to be in a state of insurrection against the United States, and that all commercial intercourse between them and citizens of other States was and would be unlawful, except when carried on under special license, until such insurrection should cease. At the date of this proclamation no part of the State of Arkansas was occupied and controlled by the forces of the United States, nor did the inhabitants of any part of the State at that time publicly maintain a loyal adhesion to the Union and the Constitution. Hence, upon the issuing of said proclamation, a state of hostility or civil war existed between the inhabitants of the State of Arkansas and the United States, and there was not at that time any organized authority in Arkansas, loyal to the Constitution, competent to choose or appoint Senators of the United States. It is claimed, however, that since that period the State, or the greater portion of it, has been occupied and controlled by the forces of the United States engaged in the dispersion of the insurgents, and that the inhabitants of said State, loyal to the Union and the Constitution, have reorganized their State government, and have the right, through the legislature they have instituted, to choose two Senators for said State.

The Constitution declares that "the Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years," and makes each House "the judge of the election, returns, and qualifications of its own members." In the investigation of the claimants' right to seats the first question to be determined is, Was the body by whom they were elected clothed with authority to elect Senators; in other words, was it, in a constitutional sense, "the legislature of Arkansas?"

A question similar to this arose some years since between Robbins and Potter, each claiming to have been elected Senator by the legislature of Rhode Island, though by different bodies. In that case the Senate was called upon to decide, and did decide which of the two bodies, each claiming to be legitimate, was the legislature contemplated by the Constitution. The Supreme Court of the United States, in the case of Luther *vs.* Borden, growing out of the political difficulties in Rhode Island in 1841 and 1842, held that "when the Senators and Representatives of a State are admitted into the councils of the Union the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government."

The claimants laid before the committee a statement of the circumstances attending

the assembling of the body by which they were elected, in which, after detailing the condition of the State while under rebel control, and prior to September, 1863, they say:

"Upon the advent of the Union army the rebels in the State, guerrillas and all, for the most part left with their armies, leaving about two-thirds of the State comparatively free from guerrilla depredation.

"The Union men came flocking from the mountains, where they had lain for two years, to the Federal standard, and nearly every man whom the medical examiners would receive joined the Federal army.

"Those who were rejected (and their number was enormous, their constitutions having been broken by exposure and their hardships), and those whom circumstances prevented from joining the army, found themselves, so far as law was concerned, in a state of chaos. Many of them, living remote from military posts, had not even the protection of military law.

"Immediately they began to agitate the question of a reorganization of their State government. They first moved in primary meetings, and on the 30th of October, 1863, they held a mass meeting in the city of Fort Smith, in which some twenty counties are said to have been represented, and at which they called upon all the counties in the State to elect delegates (after having elected commissioners of election) to a State convention, to be held in the city of Little Rock on the 8th day of January, 1864, for the purpose of so amending the constitution as to abolish slavery. Simultaneously with this meeting meetings were held in a number of other counties. In every single one (in ignorance of the action of others in many instances) they declared for a convention and for the abolition of slavery.

"Commissioners of election were first elected, and they held the elections for the delegates.

"All this was prior to the President's amnesty proclamation.

"When the convention met forty-five delegates were present, representing about one-half of the State. (Several of the delegates failed to attend.) They repudiated the rebel debt, State and Confederate, abolished slavery, and submitted the constitution to the people for their ratification. They also provided for taking the vote for State and county officers and members of the legislature at the same time with the vote for the ratification of the constitution.

"The result of those elections was 12,177 for the constitution and 226 against it, an election of State and county officers, an election of delegates to the lower house of Congress, and a representation in the State legislature from forty-six of the fifty-four counties of the State."

The number of persons in Arkansas who voted for President in 1860 was 54,043, less than one-fourth of whom, as appears from the statement of the claimants, took part in the reorganization of the State government. This, however, would not be fatal to the reorganization, if all who were loyal to the Union had an opportunity to participate, and the State was free from military control. Such, however, is understood not to have been the case. The President had not then, nor has he up to this time, recalled his proclamation, which declared the inhabitants of Arkansas in a state of insurrection against the United States, nor was there any evidence before the committee that said insurrection had ceased or been suppressed. At the time when the body which chose the claimants was elected, when it assembled, and at this time, the State of Arkansas is occupied by hostile armies, which exercise supreme authority within the districts subject to their control. While a portion of Arkansas is at this very time, as the committee are informed, in the actual possession and subject to the control of the enemies of the United States, other parts of the State are only held in subordination to the laws of the Union by the strong arm of military power. While this state of things continues, and the right to exercise armed authority over a large part of the State is claimed and exerted by the military power, it cannot be said that a civil government, set up and continued only by the sufferance of the military, is that republican form of government which the Constitution requires the United States to guarantee to every State in the Union.

When the rebellion in Arkansas shall have been so far suppressed that the loyal inhabitants thereof shall be free to re-establish their State government upon a republican foundation, or to recognize the one already set up, and by the aid and not in subordination to the military to maintain the same, they will then, and not before, in the opinion of your committee, be entitled to a representation in Congress, and to participate in the administration of the Federal Government. Believing that such a state of things did not at the time the claimants were elected, and does not now, exist in the State of Arkansas, the committee recommend for adoption the following resolution:

Resolved, That William M. Fishback and Elisha Baxter are not entitled to seats as Senators from the State of Arkansas.

WEDNESDAY, *June* 29, 1864.

On motion by Mr. Trumbull, the Senate proceeded to consider the resolution reported by the Committee on the Judiciary, declaring that William M. Fishback and Elisha Baxter are not entitled to seats as Senators elect from the State of Arkansas.

On motion by Mr. Wade to postpone the further consideration of the resolution to to-morrow, and that the Senate proceed to the consideration of the bill (H. R. 244) to guarantee to certain States whose governments have been usurped or overthrown a republican form of government, it was determined in the negative—yeas 5, nays 28.

On motion by Mr. Wade, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Clark, Harlan, Lane of Kansas, Sherman, and Wade.

Those who voted in the negative are Messrs. Anthony, Brown, Buckalew, Carlile, Chandler, Conness, Cowan, Davis, Fessenden, Foot, Foster, Grimes, Harris, Hendricks, Hicks, Howe, Johnson, McDougall, Morgan, Powell, Ramsey, Riddle, Sumner, Ten Eyck, Trumbull, Van Winkle, Willey, and Wilson.

After debate,

On the question to agree to the resolution, it was determined in the affirmative—yeas 27, nays 6.

On motion by Mr. Trumbull, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Brown, Buckalew, Carlile, Chandler, Clark, Cowan, Davis, Fessenden, Foot, Foster, Hale, Harlan, Harris, McDougall, Morgan, Morrill, Powell, Ramsey, Riddle, Saulsbury, Sherman, Sumner, Ten Eyck, Trumbull, Wade, and Wilkinson.

Those who voted in the negative are Messrs. Doolittle, Hicks, Howe, Lane of Kansas, Nesmith, and Pomeroy.

So it was

Resolved, That William M. Fishback and Elisha Baxter are not entitled to seats as Senators from the State of Arkansas.

[The debate is found on pages 3360–3368 of the Congressional Globe, part 4, 1st sess. 38th Cong.]

[Special session of Senate, March, 1865.]

CREDENTIALS OF MR. SNOW.

TUESDAY, *March* 7, 1865.

Mr. Lane, of Kansas, presented the credentials of the Hon. William D. Snow, elected a Senator by the legislature of the State of Arkansas for the term of six years commencing on the 4th day of March, A. D. 1865.

Objection to the reception of the credentials being made by Mr. Howard,

The President *pro tempore* submitted the question to the decision of the Senate; and on the question, Shall the credentials be received?

After debate, and the consideration of executive business, the Senate adjourned.

[The debate is found on pages 1427–1429 of the Congressional Globe, part 2, 2d sess. 38th Cong.]

WEDNESDAY, *March* 8, 1865.

The Senate resumed the consideration of the credentials of the Hon. William D. Snow, yesterday presented by Mr. Lane, of Kansas, the reception of which was objected to by Mr. Howard; and

After debate,

Mr. Howard having withdrawn his objection to their reception,

On motion by Mr. Lane, of Kansas,

Ordered, That the credentials be referred to the Committee on the Judiciary.

[The debate is found on pages 1429–1432 of the Congressional Globe, part 2, 2d sess. 38th Cong.]

THURSDAY, *March* 9, 1865.

Mr. Trumbull, from the Committee on the Judiciary, to whom were referred the credentials of William D. Snow, claiming to have been elected a Senator, commencing on the 4th day of March, 1865, submitted a report (No. 1), recommending that the further consideration of the subject be postponed to the next session of Congress.

Ordered, That the report be printed.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Trumbull (chairman), Harris, Collamer, Sherman, Johnson, Williams, and Hendricks.]

IN THE SENATE OF THE UNITED STATES.

MARCH 9, 1865.—Ordered to be printed.

Mr. Trumbull submitted the following report:

The Committee on the Judiciary, to whom were referred the credentials of William D. Snow, claiming to have been elected a Senator from the State of Arkansas for six years from the 4th of March instant, report:

That, in the year 1861, the constituted authorities of the State of Arkansas undertook to withdraw that State from the Union, and so far succeeded in the attempt as by force of arms to expel from the State for a time the authority of the United States, and set up a government in hostility thereto, and, in pursuance of an act of Congress, the inhabitants of said State have since been declared to be in a state of insurrection against the United States. The committee therefore recommend that the question of the admission of Mr. Snow to a seat be postponed to the next session of Congress, and until Congress shall take action in regard to the recognition of the alleged existing State government in Arkansas.

[First session of the Thirty-ninth Congress.]

CREDENTIALS OF MESSRS. BAXTER AND SNOW.

MONDAY, *February* 26, 1866.

A motion was made by Mr. Lane, of Kansas, that the credentials of Elisha Baxter and William D. Snow, as Senators-elect from the State of Arkansas, be taken from the files of the Senate, and that they be referred to the Committee on the Judiciary.

A division of the question was called for by Mr. Clark; and,

On the question to agree to the first branch of the motion, to wit, that the credentials of Elisha Baxter and William D. Snow as Senators-elect from the State of Arkansas be taken from the files of the Senate, it was determined in the affirmative; and,

On the question to agree to the second branch of the motion, to wit, and that they be referred to the Committee on the Judiciary,

On motion by Mr. Clark that the credentials lie on the table, it was determined in the affirmative—yeas 29, nays 17.

On motion by Mr. Lane, of Kansas, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Morrill, Nye, Poland, Pomeroy, Ramsey, Sherman, Sumner, Trumbull, Wade, Willey, Williams, Wilson, and Yates.

Those who voted in the negative are Messrs. Buckalew, Cowan, Davis, Dixon, Doolittle, Guthrie, Hendricks, Johnson, Lane of Kansas, Morgan, Nesmith, Norton, Riddle, Saulsbury, Stewart, Stockton, and Van Winkle.

So it was

Ordered, That the credentials lie on the table.

* * * * * * *

A motion was made by Mr. Lane, of Kansas, to admit the Senators-elect from the State of Arkansas to seats on the floor of the Senate.

On motion by Mr. Wade that the motion of Mr. Lane, of Kansas, lie on the table, it was determined in the affirmative—yeas 27, nays 18.

On motion by Mr. Lane, of Kansas, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Morrill, Nye, Poland, Ramsey, Sherman, Sumner, Trumbull, Wade, Williams, Wilson, and Yates.

Those who voted in the negative are Messrs. Buckalew, Cowan, Davis, Dixon, Doolittle, Guthrie, Hendricks, Johnson, Lane of Kansas, Morgan, Nesmith, Norton, Riddle, Saulsbury, Stewart, Stockton, Van Winkle, and Willey.

So it was

Ordered, That the motion lie on the table.

[The debate is found on pages 1025–1027 of the Congressional Globe, part 2, 1st sess. 39th Cong.]

MILEAGE TO CLAIMANTS.

[First session of the Thirty-eighth Congress.]

WEDNESDAY, *June* 29, 1864.

Mr. Trumbull asked, and by unanimous consent obtained, leave to submit the following resolution:

"*Resolved* That the Secretary be instructed to pay, out of the contingent fund of the Senate, the usual mileage of Senators to Elisha Baxter and William M. Fishback, respectively, as claimants for seats in the Senate from Arkansas, at the first session of this Congress."

The said resolution was read the first and second times, by unanimous consent, and considered as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time by unanimous consent.

Resolved, That it pass.

[Second session of the Thirty-eighth Congress.]

FRIDAY, *March* 3, 1865.

Mr. Lane, of Kansas, submitted the following resolution for consideration:

"*Resolved*, That the Secretary be instructed to pay out of the contingent fund of the Senate the usual mileage to Elisha Baxter and William M. Fishback, respectively, as claimants for seats in the Senate from Arkansas, and Charles Smith and R. King Cutler respectively, as claimants for seats in the Senate from Louisiana, at the second session of this Congress."

[Special session of Senate, March, 1865.]

MONDAY, *March* 6, 1865.

Mr. Lane, of Kansas, submitted the following resolution for consideration (the same that was submitted March 3).

WEDNESDAY, *March* 8, 1865.

On motion by Mr. Lane, of Kansas, the Senate proceeded to consider the resolution submitted by him on the 6th instant, to pay mileage to certain claimants to seats in the Senate from the States of Arkansas and Louisiana; and

The resolution having been modified, on the motion of Mr. Lane, of Kansas, to read as follows:

"*Resolved*, That the Secretary be instructed to pay out of the contingent fund of the Senate the usual mileage to Elisha Baxter, William M. Fishback, and William D. Snow respectively, as claimants for seats in the Senate from Arkansas, and Charles Smith and R. King Cutler, respectively, as claimants for seats in the Senate from Louisiana, at the second session of the last Congress,"

Ordered, That the resolution be referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

THURSDAY, *March* 9, 1865.

Mr. Morrill, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred a resolution to pay to certain persons claiming seats in the Senate as Senators from Arkansas and Louisiana the mileage of Senators from those States, reported the resolution without amendment, and submitted a report thereon, asking that the committee be discharged from its further consideration.

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Morrill, Ramsey, and Henderson.]

The Committee on the Contingent Expenses of the Senate, to whom was referred a resolution that the Secretary be instructed to pay out of the contingent fund of the Senate the usual mileage to Elisha Baxter, William M. Fishback, and William D. Snow respectively, as claimants for seats in the Senate from Arkansas, and Charles Smith and R. King Cutler, respectively, as claimants for seats in the Senate from Louisiana, at the second session of the last Congress, having attentively considered the same, report that the committee conceive their authority to be limited by law to the auditing of account

* Taken from the Congressional Globe, part 2, 2d sess. 38th Cong., page 1435.

for the ordinary contingent expenses of the Senate, and that mileage is payable only to Senators as members of Congress, and not as claimants for seats in the Senate, without an express order of the Senate. The terms of the resolution exclude the inference that the mileage therein contemplated is either ordinary contingent expenses of the Senate or mileage of Senators—members of Congress. Not regarding the resolution in the nature of an order of the Senate to the committee to audit the mileage of the claimants, and failing to perceive any authority of law for allowing it, they report the resolution back to the Senate, and respectfully ask to be discharged from its further consideration.

FRIDAY, *March* 10, 1865.

On motion by Mr. Lane, of Kansas, the Senate proceeded to consider the resolution to pay out of the contingent fund of the Senate to certain persons claiming to be Senators duly elected from the States of Arkansas and Louisiana the mileage of Senators from those States; and,

After debate,

On motion by Mr. Wilson that the Senate proceed to the consideration of executive business, it was determined in the affirmative—yeas 24, nays 12.

On motion by Mr. Trumbull, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Brown, Buckalew, Chandler, Conness, Cragin, Creswell, Davis, Foot, Grimes, Guthrie, Howard, Johnson, Lane of Indiana, Morgan, Norton, Nye, Riddle, Sprague, Stewart, Sumner, Wade, Wilson, and Wright.

Those who voted in the negative are Messrs. Collamer, Dixon, Doolittle, Foster, Harris, Lane of Kansas, Pomeroy, Trumbull, Van Winkle, Willey, Williams, and Yates.

So the motion was agreed to.

[The debate is found on pages 1436–1440 of the Congressional Globe, part 2, 2d sess. 38th Cong.]

[Thirty-eighth Congress—Second session.]

R. KING CUTLER AND CHARLES SMITH, AND MICHAEL
of Louisiana.

December 7, 1864, the credentials of Mr. Cutler, elected to succeed Mr. Slidell, whose te
pired March 3, 1861, and the credentials of Mr. Smith, elected to fill the unexpired term, en
3, 1865, of Mr. Benjamin, retired, were presented. At the same time there was presented
of citizens of Louisiana remonstrating against their admission to seats in the Senate. The
and memorial were referred to the Committee on the Judiciary. January 11, 1865, the
reported that the claimants were duly elected, and that, but for the fact that, in pursuan
of Congress passed July 13, 1861, the inhabitants of the State had been declared in a stat
rection, which condition of things had not ceased at the time of the reorganization of the
ernment and the election of the claimants, they would recommend their immediate a
their seats; that the inhabitants of the State having been declared in a state of insurrect
suance of a law passed by the two Houses of Congress, the committee deemed it impro
Senate to admit to seats Senators from Louisiana till by some joint action of both Ho
should be some recognition of an existing State government; that they recommend th
of an accompanying joint resolution that the United States recognize the State governme
to as the legitimate government of the State. This resolution was debated, but no
taken on it, and the claimants were not admitted to seats. The proceedings of the Sen
to the joint resolution are not included in the extracts given below.

March 2, 1865, the credentials of Mr Hahn, elected for the term succeeding that for
Smith had been elected, were presented. A motion was made that they be laid on the
jection being made to their reception, the Senate voted to lay this motion on the table.
the credentials were taken from the files and presented to the Senate, and it was order
further consideration of them be postponed to the next session. No further action wa
the credentials.

The history of the case here given consists of a transcript of the proceedings of the S
ing to the credentials of the claimants from Senate Journal, 2d sess. 38th Cong., and th
the committee, with the exception of certain accompanying documents, from Senate
sess. 38th Cong., No. 117.

There were no debates in regard to the credentials of the claimants. The debates o
tion of the joint resolution reported by the committee are found on pages 1011, 1061-107
1101-1111 of the Congressional Globe, part 2, 38th Cong., 2d sess.

Documents relating to the case are found in Senate Miscellaneous, 2d sess. 38th Cong
and 9.

Mileage was not allowed to the claimants. For the proceedings of the Senate on a re
pay them mileage see latter part of preceding case of Fishback, Baxter, and Snow, page

CREDENTIALS OF MESSRS. CUTLER AND SMITH.

WEDNESDAY, *December*

The President *pro tempore* laid before the Senate a letter of the Hon. Micha
governor of the State of Louisiana, communicating the credentials of the Hon
Smith and the Hon. R. King Cutler, Senators-elect from that State to the C
the United States, with copies of the proceedings of the general assembly of Lo
reference to their election; which was read.

Ordered, That they lie on the table, and be printed.

Mr. Morgan presented the credentials of the Hon. Charles Smith and the
King Cutler, Senators-elect from the State of Louisiana to the Congress of t
States, with copies of the proceedings of the general assembly of Louisiana in
to their election.

Ordered, That they lie on the table.

Mr. Wade presented a memorial of citizens of Louisiana remonstrating ag
admission of Senators or Representatives from the pretended State of Louisian
Congress of the United States and the reception of any electoral vote of that
counting the votes for President and Vice-President of the United States, an
the passage of an act guaranteeing republican government in the insurrectiona

Ordered, That it lie on the table and be printed.

THURSDAY, *December*

On motion by Mr. Morgan,

Ordered, That the credentials of the Hon. Charles Smith and the Hon. R.
ler, Senators-elect from the State of Louisiana, and the proceedings of the legi
that State in reference to their election, yesterday presented to the Senate, b
to the Committee on the Judiciary.

On motion by Mr. Wade,

Ordered, That the memorial of citizens of Louisiana remonstrating agains

mission of Senators or Representatives from the State of Louisiana to seats in the Senate or House of Representatives, yesterday presented by him, be referred to the Committee on the Judiciary.

WEDNESDAY, January 11, 1865.

Mr. Trumbull, from the Committee on the Judiciary, reported the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That there be printed for the use of the Committee on the Judiciary certain evidence before them relating to the rights to seats of Messrs. Cutler and Smith as Senators from the State of Louisiana."

SATURDAY, February 18, 1865.

Mr. Trumbull, from the Committee on the Judiciary, to whom were referred the credentials of the Hon. Charles Smith and the Hon. L. Kiang Cutler, elected senators by the legislature of Louisiana, and a memorial of citizens of Louisiana remonstrating against the admission of Senators or Representatives from the State of Louisiana into the Congress of the United States, submitted a report. [illegible] accompanied by a joint resolution (S. 117) recognizing the government of the State of Louisiana.

The resolution was read, and passed to a second reading.

Ordered, That the report be printed.

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Trumbull, chairman, Fessenden, Ten Eyck, Harris, Foot, Powell, and Johnson.]

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1865.—Ordered to be printed.

Mr. Trumbull made the following report, to accompany joint resolution S. No. 117:

The Committee on the Judiciary, to whom were referred the credentials of L. Kiang Cutler and Charles Smith, claiming seats from the state of Louisiana, report:

That in the early part of 1861 the constituted authorities of the state of Louisiana undertook to withdraw that state from the Union, and at the succeeding session of the legislature, as by force of arms to expel from the state for a time the authority of the United States, and set up a government in hostility thereto.

Since that time the United States, as a necessity in the maintenance of its legitimate authority in Louisiana as one of the states of the Union, has been compelled to take possession thereof by its military forces, and in the absence of any loyal organization civil magistrates loyal to the Union temporarily to govern the same by military power.

While a large portion of the State, embracing more than two-thirds of its population, was thus under the control of the military power, steps were taken with its assistance, and to some extent under its direction, for the reorganization of a state government loyal to the Government of the United States. The first action had looking to such reorganization was a registration of the loyal people within the lines of military occupation entitled to vote under the constitution and laws of Louisiana at the beginning of the rebellion. The lists thus made up contain the names of twenty-[illegible] thousand voters, which is represented to be more than half the number of voters in the same parishes previous to the rebellion, and more than two-thirds of the [illegible] population within the same localities at the time the registry was taken. The next step taken in the reorganization of the State government was the election of state officers on the 22d of February, 1864, under the auspices of the military authority, acting in conjunction with prominent and influential citizens. At this election 11,414 votes were polled, one of which were cast by soldiers and sailors, citizens of Louisiana, who would not have been entitled to vote under the constitution of Louisiana as it existed prior to the rebellion, for the sole reason that they were in the military service, but who possessed in other respects all the qualifications of voters required by that instrument. The balance, 10,606, were legal voters under the constitution of the state prior to the rebellion. The third step in the reorganization of the state government was to call a convention for the amendment of the constitution of the state. Delegates to the convention were elected March 28, 1864, under the joint and harmonious direction of the military authorities and the State officers who had been elected on the 22d February previous. In a paper submitted to the committee by Mr. Cutler, it appears that delegates were apportioned to every election district in the state, both within and beyond the lines, so

* A reference to certain document accompanying the report and not here printed is given in the head-note.

that if beyond the lines of the army the people of the State had chosen to participate i that election, the delegates might have been received if they had shown themselves loya to the Government. They were about 150 in number. All elections subsequent to tha for delegates have been ordered and controlled by the representatives of the people.

In the organization of the convention it was provided that a majority of the whol number apportioned to the State, if every district within and beyond the lines had bee represented, should constitute a quorum for the transaction of business. Every vote i the convention, from a question of order to the ratification of the constitution, was con ducted under this rule, and was approved by a majority of all the delegates apportione to the State if every district had been represented.

The delegates met in convention, in the city of New Orleans, on the 6th day of April 1864, remained in session till July 23, 1864, and adopted a constitution, republican i form and in entire harmony with the Constitution of the United States and the grea principles of human liberty.

This constitution was submitted, by the convention which adopted it, to the peopl for ratification on the first Monday of September, 1864, and adopted by a vote of 6,83 for to 1,566 against it.

At the same time the vote was taken on the adoption of the constitution a legislatu was elected, representing all those parishes of the State reclaimed from insurgent contro and embracing about two-thirds of its population. This legislature assembled at Ne Orleans on the 3d day of October, 1864, and proceeded to put in operation a State go ernment by providing for levying and collecting taxes, the establishment of tribunals f the administration of justice, the adoption of a system of education, and such oth measures as were necessary to the re-establishment of a State government in harmo with the Constitution and laws of the United States. The State government thus inaug rated has been in succcessful operation since the period of its establishment, and yo committee are assured that if no exterior hostile force is permitted to enter the State, t local State government is fully equal to the maintaining of peace and tranquillity throu out the State in subordination to the Constitution and laws of the United States.

The manner in which the new State government was inaugurated is not wholly f from objection. The local State authorities having rebelled against the Governme and there being no State or local officers in existence loyal to its authority, in taking initiatory steps for a reorganization some irregularities were unavoidable, and the nu ber of voters participating in this reorganization is less than would have been desira Yet, when we take into consideration the large number of voters who had left the St in consequence of the rebellion, who had fallen in battle, or were absent at the time the election, both in the Union and rebel armies, and the difficulties attending the taining of a full vote from those remaining, in consequence of the unsettled condition affairs in the State, and the further fact that the adoption of the amended consti tion was not seriously opposed, and therefore the question of its ratification not calcula to call out a full vote, the number of votes cast is perhaps as large as could have be expected, and the State government which has been reorganized, as your committee lieve, fairly represents a majority of the loyal voters of the State.

Appended hereto is a copy of the various orders and proclamations issued in regard the election of State officers, delegates to the constitutional convention, and members the legislature, and also a copy of election laws and instructions relative to the duties commissioners of elections, issued for the guidance of officers in conducting said electio

Messrs. Cutler and Smith, the claimants for seats, were duly elected Senators by th legislature which convened on the 3d day of October, 1864, and but for the fact that, i pursuance of an act of Congress passed on the 13th day of July, 1861, the inhabitants o the State of Louisiana were declared to be in a state of insurrection against the Unite States and all commercial intercourse between them and the citizens of other States de clared to be unlawful, which condition of things had not ceased at the time of the reor ganization of the State government and the election of Messrs. Cutler and Smith, you committee would recommend their immediate admission to seats.

The persons in possession of the local authorities of Louisiana having rebelled again the authority of the United States and her inhabitants having been declared to be in state of insurrection in pursuance of a law passed by the two Houses of Congress, you committee deem it improper for this body to admit to seats Senators from Louisian till by some joint action of both Houses there shall be some recognition of an existin State government acting in harmony with the Government of the United States an recognizing its authority.

Your committee therefore recommend for adoption, before taking definite action upo the right of the claimants to seats, the accompanying joint resolution:

Resolved by the Senate and House of Representatives of the United States of America i Congress assembled, That the United States do hereby recognize the government of th State of Louisiana inaugurated under and by the convention which assembled on th

6th day of April, A. D. 1864, at the city of New Orleans, as the legitimate government of said State, entitled to the guarantee and all other rights of a State government under the Constitution of the United States.

CREDENTIALS OF MR. HAHN.

THURSDAY, *March* 2, 1865.

Mr. Doolittle presented a certified copy of the proceedings of the legislature of the State of Louisiana, showing that the Hon. Michael Hahn was elected a Senator by the legislature of that State for the term of six years commencing on the 4th day of March, A. D. 1865; which were read.

Objection being made by Mr. Davis to the reception of the paper,

On motion by Mr. Trumbull,

Ordered, That it lie on the table.

[The debate is found on page 1278 of the Congressional Globe, part 2, 2d sess. 38th Cong.]

[Special session of Senate, March, 1865.]

THURSDAY, *March* 9, 1865.

On motion by Mr. Doolittle, the credentials of the Hon. Michael Hahn, elected a Senator by the legislature of Louisiana, were taken from the files and presented to the Senate.

On motion by Mr. Doolittle,

Ordered, That the further consideration thereof be postponed to the next session of Congress.

[Second session Thirty-eighth Congress, and special session of Senate, March, 1

JOSEPH SEGAR AND JOHN C. UNDERWOOD,
of Virginia.

February 17, 1865, the credentials of Mr. Segar, elected to fill the unexpired term ending M 1869, of Lemuel J. Bowden, who died January 2, 1864, were presented. A motion was ma they be referred to the Committee on the Judiciary. After debate it was ordered that the the table. It appears from the debate that the question raised was whether the body elect Segar was the legislature of Virginia, a great part of that State being in rebellion. Extrac remarks given below show the grounds upon which certain Senators proceeded.

March 9, 1865, the credentials of Mr. Underwood, elected for the term beginning March 4, 18 presented. The credentials of Mr. Segar were taken from the files and presented to the Se was ordered that the further consideration of both credentials be postponed to the next se Congress. Mr. Segar and Mr. Underwood were elected at the same time and by the same ture. No further action was taken on the credentials.

February 18, 1879, a resolution passed the Senate that there be paid to Mr. Segar out of the gent fund of the Senate the sum of $5,000, in full compensation for his expenses in prosecut claim. A petition for like compensation has been made by the representatives of Mr. Und deceased, on which there have been favorable reports, but no further action by the Senate.

The history of the case here given consists of a transcript of the proceedings of the Senate to it from Senate Journals, 2d sess. 38th Cong., and extracts from remarks of several Sena transcript of the proceedings of the Senate in regard to the allowance of compensation, from Journals, 43d–48th Cong., with the reports thereon, are also given.

Special references to the debates of each day are inserted below.

FRIDAY, *February* 17, 1

Mr. Willey presented the credentials of the Hon. Joseph Segar, elected a Sen the legislature of the State of Virginia to fill the vacancy occasioned by the death Hon. Lemuel J. Bowden; which were read.

A motion was made by Mr. Sumner that the credentials be referred to the Com on the Judiciary.

On motion by Mr. Howard to amend the motion of Mr. Sumner by adding the words "and that the committee be instructed to inquire and report upon the e returns and qualifications of the claimant,"

After debate,

On motion by Mr. Sherman that the credentials lie on the table,

Mr. McDougall raised a question of order, to wit: That the subject under con tion being a question of privilege, affecting the organization of the Senate, the to lie on the table, which precluded debate, was not in order.

The President *pro tempore* decided that a question of privilege, when brought the Senate for its action, was subject, like other questions, to such motion as ar ator may think proper to submit; and decided that the motion of Mr. Sherman order.

From this decision Mr. McDougall appealed; and the question being submitted Senate, Shall the decision of the Chair stand as the judgment of the Senate? it wa mined in the affirmative.

So the decision of the Chair was sustained; and,

On the question to agree to the motion that the credentials lie on the table, determined in the affirmative—yeas 29, nays 13.

On motion by Mr. McDougall, the yeas and nays being desired by one-fifth Senators present,

Those who voted in the affirmative are Messrs. Anthony, Brown, Buckalew, Ch Clark, Collamer, Conness, Cowan, Davis, Doolittle, Farwell, Foster, Hale, Harlan ard, Howe, Morgan, Morrill, Nye, Powell, Ramsey, Sherman, Sprague, Sumne Eyck, Trumbull, Wade, Wilkinson, and Wilson.

Those who voted in the negative are Messrs. Dixon, Hendricks, Johnson, Lane diana, Lane of Kansas, McDougall, Nesmith, Pomeroy, Richardson, Saulsbur Winkle, Willey, and Wright.

So it was

Ordered, That the credentials lie on the table.

[The debate is found on pages 845–849 of the Congressional Globe, part 2, 2d ses Cong.]

[Special session of Senate, March, 1865.]

TUESDAY, March 9, 1865.

Mr. Doolittle presented the credentials of the Hon. John C. Underwood, elected a Senator by the legislature of Virginia for the term of six years commencing on the fifth day of March, A. D. 1865; which were read.

On motion by Mr. Sumner,

Ordered, That the further consideration of the credentials be postponed to the next session of Congress.

* * * * * * *

On motion by Mr. Willey, the credentials of the Hon. Joseph Segar, elected a Senator by the legislature of Virginia, were taken from the files and presented to the Senate, and

On motion by Mr. Willey,

Ordered, That the further consideration thereof be postponed to the next session of Congress.

[The debate is found on pages 1433, 1434 of the Congressional Globe, part 2, 2d sess. 38th Cong.]

[Remarks of Mr. Sumner, of Massachusetts, in favor of reference of a committee of Mr. Segar's credentials. Delivered February 17, 1865, and taken from page [illegible] of the Congressional Globe, part 2, 2d sess. 38th Cong.]

"I regret that a question of this magnitude has been presented upon the Senate at this late period of the session when there is so much public business which has not yet received the attention of either House of Congress. The Senator from Michigan does not exaggerate its magnitude. Sir, it is much to be a Senator of the United States, with all the powers and privileges pertaining to that office—powers and privileges legislative, diplomatic, and executive; and the question now is whether all these extraordinary powers and privileges shall be recognized in a gentleman whose credentials have been sent to the Chair. I thought it my duty, on hearing that certificate read as I entered the Chamber, to move at once its reference to the Committee on the Judiciary. I am astonished that there can be any hesitation in making that reference. The Senator who hesitate show an insensibility to the character of the question. Is the Senate ready to act blindfolded or with the eyes open? I insist that in a question of this magnitude the Senate shall act with the eyes open, wide open; and I know no other way in which they can be brought to act so except through the intervention of a responsible committee of this body. Therefore, sir, I proposed that the credentials should be referred to that committee. It will be the duty of the committee, as my friend from Michigan has suggested, to consider in the first place whether a State in armed rebellion like Virginia can have Senators on this floor. That is a great question constitutional, political, personal. It will be their duty, then, to consider in the next place whether the gentleman whose credentials have been presented has been chosen legally under the Constitution of the United States by any State. Now, sir, I do not intend to go into either of those questions. I simply open them now for the consideration of the Senate.

"I say, sir, I do not mean to prejudge those questions, but I do insist that a measure of this importance shall not be acted on without due consideration, and in spite of indifference to those facts which now stare us in the face, glaring upon us every day in every newspaper that we read. Sir, you cannot be indifferent to facts. It is in vain that Senators say that Virginia, now in war against the Union, is entitled to representation on this floor, when you have before you the undeniable fact that the greater part of that State is at this moment in possession of an armed rebellion, and when you have before you the other fact filling almost all the newspapers of the land that the body of men who have undertaken to send a Senator to Congress are no more than the common council of Alexandria; and you have the question distinctly presented to you whether a representative of the common council of Alexandria is to enter this Chamber and share the same powers and privileges of any Senator from any State, the Senator from New York [Mr. Morgan], or my friend farther from me, the Senator from Pennsylvania [Mr. Cowan]. I merely open these points without now undertaking to decide them, but simply as an unanswerable argument in favor of the reference to the committee."

[Extract from remarks of Mr. Willey, of West Virginia, in favor of a course Mr. Segar to be at once admitted to his seat. Delivered February 17, 1865, and taken from page [illegible] of the Congressional Globe, part 2, 2d sess. 38th Cong.]

"But the honorable Senator and those who think with him have taken the ground that Virginia is not entitled to representation on this floor. Why, sir, has not the Senate recognized the fact that she is entitled to such representation during the whole of the session and during the whole of the last session of Congress? Has there not been a seat

ator representing the State of Virginia on this floor, participating in the proceedings of this body, recording his yeas and nays, and to the extent of his vote controlling the legislation of Congress? Has he not been recognized without a murmur and without a word of objection? So far as that fact is concerned I hold that the Senate is barred by its own action, that it should have excluded the honorable gentleman who represents Virginia on the floor already if Virginia be not entitled as a State to representation on this floor. I put it to Senators to say, if Mr. Bowden had been living to-day, whether he would not have been allowed to occupy his seat without let or hindrance, without any objection, the same as his honorable colleague has been allowed to occupy his seat without objection. I say, therefore, the action of the Senate itself has recognized the fact not only that Virginia is entitled to representation on this floor, but that she has been and is represented on this floor; and so long as the honorable Senator who represents Virginia here is allowed to retain his seat it strikes me that it is not competent for the Senate to say that Virginia is not entitled to representation on this floor.

"I fully concur in all that has been said in regard to the importance of this question. I know very well, for I have been enabled to see it and to feel it personally, with what eager desire the loyal population of Virginia are looking to the action of Congress in this respect to sustain the legislature at Alexandria. I know how all the northwest portion of Virginia, now composing the State of West Virginia, was brought in around the loyal legislature of Wheeling, forming a nucleus, until the whole State was brought under the flag of the Union and under the jurisdiction of the Federal Constitution; and I know that such will be the result in Virginia if its loyal legislature is sustained. County after county—such is my information from beyond the lines to-day, having letters in abundance to that effect—eagerly desire for the time to come when they shall be relieved of the power of the rebellion, that they may reorganize the old government of Virginia around the legislature of Alexandria.

"But, sir, it is a fact, not only that the Senate of the United States has recognized the existence of Virginia as a State, and her right to be represented on this floor, but the executive branch of the Government has done so, I imagine; for I saw it stated in the papers the other day that the Secretary of State had transmitted the constitutional amendment for the abolition of slavery to the executive of Virginia, and through him it was sent to the legislature to be acted upon, and that legislature had acted upon it and ratified the amendment. We shall place ourselves in a singular position if we reject a gentleman who comes here accredited with a certificate of election in due form and repulse him from our doors and refuse to allow him a seat on the floor when we have another member representing the same State upon the floor and when the executive branch of the Government recognizes the Virginia legislature at Alexandria as the true legislature, and Governor Peirpoint as the true and legitimate governor of Virginia. I trust that this matter will not be referred at all, but that we will hold out the inducement to the loyal people of Virginia to rally around the loyal legislature at Alexandria."

[Remarks of Mr. Sherman, of Ohio, accompanying his motion that the credentials of Mr. Segar be laid on the table. Delivered February 17, 1865, and taken from pages 848, 849 of the Congressional Globe, part 2, 2d sess. 38th Cong.]

"I wish to submit to the Senate one or two considerations on this subject, and I shall close my remarks by submitting a motion that is not debatable.

"The credentials presented to us purport to show that this gentleman was elected a member of this body on the 8th day of December last, and they bear date on the 12th day of December last. They have been held by him for more than sixty days. Every intelligent man must have known that the presentation of these credentials would give rise to debate, would involve grave political questions about which there are radical differences of opinion in this body and throughout the country. The condition of the State of Virginia, the condition of the rebel States, the effect of the rebellion, all these matters are involved in the question now presented to the Senate. This gentleman holding these papers might at any moment have presented them as a privileged question, and have stopped all the business of this body until they were disposed of, either referred or acted upon. Now, I ask the Senator whether it is reasonable for us at this period of the session to stop our deliberations, when all the important bills of the session remain unacted upon, for the purpose of considering this question? When this gentleman has had these papers in his possession for more than sixty days, when he had the right at any day to present them and call on us to decide the question raised by them, is it reasonable, I ask, to present them at this period of the session, and ask us to postpone all the important business of the session for the purpose of considering them? It seems to me it is not; and, therefore, without going into the merits of the proposition, which is a very grave and difficult one, upon which I myself have not made up my opinion, although I

have read and thought a great deal about it, I submit whether, under the circumstances, the best disposition is not to leave the question to be settled by the next Congress.

"The State of Virginia is now represented by one Senator in this body. The State of West Virginia is ably represented by two Senators. The Senator-elect, or the person who claims to act as the Senator-elect from Virginia, has slept upon his rights for sixty, ay, seventy days. It seems to me, therefore, that for the short period of the term for which he was elected, only fifteen days, it is scarcely worth while for us to delay the ordinary business of the country and stop and deliberate upon his right to a seat which at any rate will expire on the 4th day of March next. The question when presented to the next Congress will be one that we shall have ample time to decide. It will be presented at the threshold on the 4th of March next. No doubt then a gentleman claiming to be a Senator from the State of Virginia will present his credentials. Then we can take up the matter and determine it. We can take time, we can deliberate, we can get full information on the subject; and we can dispose of these grave political questions without interfering with the public business. Now we cannot. Under the circumstances, therefore, I feel it my duty to submit a motion that the credentials do lie upon the table."

[Extract from remarks of Mr. Doolittle, of Wisconsin, maintaining that the case of Virginia stood on different grounds from that of Arkansas, in regard to which the Committee on the Judiciary had recommended a postponement of the question until the next session of Congress. Delivered March 9, 1865, and taken from the Congressional Globe, part 2, 2d sess. 38th Cong.]

"In relation to the State of Virginia I think every Senator can easily see that it stands on very different ground perhaps from any of the other States from which Senators have appeared with their credentials. The State of Virginia, as such, has been recognized by this Government in every form, by the executive department, and by Congress. By legislative action we have recognized the government of Virginia as the legitimate government of that State, for it was by the consent of the legislature of that State that we acted when we agreed to a division of the State of Virginia into West Virginia and East Virginia. Whether the action of Congress was wise or unwise in consenting to the erection of the State of West Virginia is not a question which is now to be discussed. The Government has in every form recognized that State. We had until the 4th day of March a Senator from that State, after the division of the State of Virginia. When West Virginia was represented by two Senators on this floor we had two Senators still from old Virginia, one of whom died during the recess of Congress, Hon. Mr. Bowden, and the other of whom remained until the 4th day of March last. So that by the action of this body we have recognized the existence of the State of Virginia—I mean the old State of Virginia independent of the State of West Virginia.

* * * * * * *

"I will finish in a word all that I desire to say. The Presidential proclamation declaring the population of certain States to be in insurrection excepted from its operation the counties of Alexandria city and county, Berkeley, Accomac, Northampton, Princess Anne, Norfolk, Norfolk city, Portsmouth city, and Elizabeth city and county, in the State of Virginia, containing a population of over 175,000; and these counties are now represented in the legislature at Alexandria.

"But, Mr. President, I see that the Senate do not desire to take up and dispose of any of these questions in relation to the admission of Senators from any of these States at the present session; and my purpose in rising now is not to press any such action on the Senate, but simply to state in answer to what fell from some Senators that this case of the State of Virginia may in some respects stand on a different footing in relation to the proclamation declaring States in insurrection, from the other States, because of the action of Congress already in recognizing the government which is denominated the Peirpoint government as being the true government of the State of Virginia, with which we have dealt, upon whose action we have suffered the erection of a new State within the limits of Virginia, so that we may be already committed on that subject in a different form from what we are in relation to these other States. I agree with the Senator from Missouri in relation to all of them, that it is our duty at the earliest practicable moment to take these free States by the hand and give them the moral support of our recognition."

COMPENSATION OF MR. SEGAR.

[First session of the Forty-third Congress.]

MONDAY, *December* 8, 1873.

Mr. Lewis presented the petition of Joseph Segar, praying to be allowed pay as a Senator from Virginia in 1863; which was referred to the Committee on Privileges and Elections.

[Thirty-eighth Congress—Second session.]

R. KING CUTLER AND CHARLES SMITH, AND MICHAEL HA

of Louisiana.

December 7, 1864, the credentials of Mr. Cutler, elected to succeed Mr. Slidell, whose term ha pired March 3, 1861, and the credentials of Mr. Smith, elected to fill the unexpired term, ending M 3, 1865, of Mr. Benjamin, retired, were presented. At the same time there was presented a mem of citizens of Louisiana remonstrating against their admission to seats in the Senate. The crede and memorial were referred to the Committee on the Judiciary. January 11, 1865, the comm reported that the claimants were duly elected, and that, but for the fact that, in pursuance of a of Congress passed July 13, 1861, the inhabitants of the State had been declared in a state of i rection, which condition of things had not ceased at the time of the reorganization of the State ernment and the election of the claimants, they would recommend their immediate admissi their seats; that the inhabitants of the State having been declared in a state of insurrection in suance of a law passed by the two Houses of Congress, the committee deemed it improper fo Senate to admit to seats Senators from Louisiana till by some joint action of both Houses should be some recognition of an existing State government; that they recommend the ado of an accompanying joint resolution that the United States recognize the State government ref to as the legitimate government of the State. This resolution was debated, but no action taken on it, and the claimants were not admitted to seats. The proceedings of the Senate rel to the joint resolution are not included in the extracts given below.

March 2, 1865, the credentials of Mr Hahn, elected for the term succeeding that for which Smith had been elected, were presented. A motion was made that they be laid on the table. jection being made to their reception, the Senate voted to lay this motion on the table. Mar the credentials were taken from the files and presented to the Senate, and it was ordered tha further consideration of them be postponed to the next session. No further action was take the credentials.

The history of the case here given consists of a transcript of the proceedings of the Senate r ing to the credentials of the claimants from Senate Journal, 2d sess. 38th Cong., and the repo the committee, with the exception of certain accompanying documents, from Senate Repor sess. 38th Cong., No. 117.

There were no debates in regard to the credentials of the claimants. The debates on the a tion of the joint resolution reported by the committee are found on pages 1011, 1061-1070, 109 1101-1111 of the Congressional Globe, part 2, 38th Cong., 2d sess.

Documents relating to the case are found in Senate Miscellaneous, 2d sess. 38th Cong., Nos and 9.

Mileage was not allowed to the claimants. For the proceedings of the Senate on a resoluti pay them mileage see latter part of preceding case of Fishback, Baxter, and Snow, page 246.

CREDENTIALS OF MESSRS. CUTLER AND SMITH.

WEDNESDAY, *December* 7, 1

The President *pro tempore* laid before the Senate a letter of the Hon. Michael governor of the State of Louisiana, communicating the credentials of the Hon. Smith and the Hon. R. King Cutler, Senators-elect from that State to the Con the United States, with copies of the proceedings of the general assembly of Lou reference to their election; which was read.

Ordered, That they lie on the table, and be printed.

Mr. Morggn presented the credentials of the Hon. Charles Smith and the King Cutler, Senators-elect from the State of Louisiana to the Congress of th States, with copies of the proceedings of the general assembly of Louisiana in to their election.

Ordered, That they lie on the table.

Mr. Wade presented a memorial of citizens of Louisiana remonstrating a admission of Senators or Representatives from the pretended State of Louisia Congress of the United States and the reception of any electoral vote of th counting the votes for President and Vice-President of the United States, a the passage of an act guaranteeing republican government in the insurrectio

Ordered, That it lie on the table and be printed.

THURSDAY, *Decemb*

On motion by Mr. Morgan,

Ordered, That the credentials of the Hon. Charles Smith and the Hon. ler, Senators-elect from the State of Louisiana, and the proceedings of the that State in reference to their election, yesterday presented to the Sena to the Committee on the Judiciary.

On motion by Mr. Wade,

Ordered, That the memorial of citizens of Louisiana remonstrating

mission of Senators or Representatives from the State of Louisiana to seats in the Senate or House of Representatives, yesterday presented by him, be referred to the Committee on the Judiciary.

WEDNESDAY, *January* 11, 1865.

Mr. Trumbull, from the Committee on the Judiciary, reported the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That there be printed for the use of the Committee on the Judiciary certain evidence before them relating to the right to seats of Messrs. Cutler and Smith as Senators from the State of Louisiana."

SATURDAY, *February* 18, 1865.

Mr. Trumbull, from the Committee on the Judiciary, to whom were referred the credentials of the Hon. Charles Smith and the Hon. R. King Cutler, elected Senators by the legislature of Louisiana, and a memorial of citizens of Louisiana remonstrating against the admission of Senators or Representatives from the State of Louisiana into the Congress of the United States, submitted a report (No. 127), accompanied by a joint resolution (S. 117) recognizing the government of the State of Louisiana.

The resolution was read, and passed to a second reading.

Ordered, That the report be printed.

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Trumbull (chairman), Foster, Ten Eyck, Harris, Foot, Powell, and Johnson.]

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1865.—Ordered to be printed.

Mr. Trumbull made the following report (to accompany joint resolution S. No. 117):

The Committee on the Judiciary, to whom were referred the credentials of R. King Cutler and Charles Smith, claiming seats from the State of Louisiana, report:

That in the early part of 1861 the constituted authorities of the State of Louisiana undertook to withdraw that State from the Union, and so far succeeded in the attempt as by force of arms to expel from the State for a time the authority of the United States, and set up a government in hostility thereto.

Since that time the United States, as a necessity to the maintaining of its legitimate authority in Louisiana as one of the States of the Union, has been compelled to take possession thereof by its military forces, and, in the absence of any local organizations or civil magistrates loyal to the Union, temporarily to govern the same by military power.

While a large portion of the State, embracing more than two-thirds of its population, was thus under the control of the military power, steps were taken with its sanction, and to some extent under its direction, for the reorganization of a State government loyal to the Government of the United States. The first action had looking to such reorganization was a registration of the loyal persons within the limits of military control entitled to vote under the constitution and laws of Louisiana at the beginning of the rebellion. The lists thus made up contain the names of between fifteen and eighteen thousand voters, which is represented to be more than half the number of voters in the same parishes previous to the rebellion, and more than two-thirds of the voting population within the same localities at the time the registry was taken. The next step taken in the reorganization of the State government was the election of State officers on the 22d of February, 1864, under the auspices of the military authority acting in conjunction with prominent and influential citizens. At this election 11,414 votes were polled, 808 of which were cast by soldiers and sailors, citizens of Louisiana, who would not have been entitled to vote under the constitution of Louisiana as it existed prior to the rebellion, for the sole reason that they were in the military service, but who possessed in other respects all the qualifications of voters required by that instrument. The balance, 10,606, were legal voters under the constitution of the State prior to the rebellion. The third step in the reorganization of the State government was to call a convention for the amendment of the constitution of the State. Delegates to this convention were elected March 28, 1864, under the joint and harmonious direction of the military authorities, and the State officers who had been elected on the 22d February previous. In a paper submitted to the committtee by Major-General Banks he states that delegates were apportioned to every election district in the State, both within and beyond the lines, so

* A reference to certain document accompanying the report and not here printed is given in the head-note.

that if beyond the lines of the army the people of the State had chosen to participate that election, the delegates might have been received if they had shown themselves loy to the Government. They were about 150 in number. All elections subsequent to th for delegates have been ordered and controlled by the representatives of the people.

In the organization of the convention it was provided that a majority of the whc number apportioned to the State, if every district within and beyond the lines had be represented, should constitute a quorum for the transaction of business. Every vote the convention, from a question of order to the ratification of the constitution, was co ducted under this rule, and was approved by a majority of all the delegates apportion to the State if every district had been represented.

The delegates met in convention, in the city of New Orleans, on the 6th day of Apr 1864, remained in session till July 23, 1864, and adopted a constitution, republican form and in entire harmony with the Constitution of the United States and the gre principles of human liberty.

This constitution was submitted, by the convention which adopted it, to the peop for ratification on the first Monday of September, 1864, and adopted by a vote of 6,8 for to 1,566 against it.

At the same time the vote was taken on the adoption of the constitution a legislatu was elected, representing all those parishes of the State reclaimed from insurgent contr and embracing about two-thirds of its population. This legislature assembled at Ne Orleans on the 3d day of October, 1864, and proceeded to put in operation a State go ernment by providing for levying and collecting taxes, the establishment of tribunals f the administration of justice, the adoption of a system of education, and such oth measures as were necessary to the re-establishment of a State government in harmor with the Constitution and laws of the United States. The State government thus inaug rated has been in succcessful operation since the period of its establishment, and yo committee are assured that if no exterior hostile force is permitted to enter the State, t local State government is fully equal to the maintaining of peace and tranquillity throug out the State in subordination to the Constitution and laws of the United States.

The manner in which the new State government was inaugurated is not wholly fr from objection. The local State authorities having rebelled against the Governme and there being no State or local officers in existence loyal to its authority, in taking t initiatory steps for a reorganization some irregularities were unavoidable, and the nu ber of voters participating in this reorganization is less than would have been desirab Yet, when we take into consideration the large number of voters who had left the St in consequence of the rebellion, who had fallen in battle, or were absent at the time the election, both in the Union and rebel armies, and the difficulties attending the c taining of a full vote from those remaining, in consequence of the unsettled condition affairs in the State, and the further fact that the adoption of the amended consti tion was not seriously opposed, and therefore the question of its ratification not calcula to call out a full vote, the number of votes cast is perhaps as large as could have be expected, and the State government which has been reorganized, as your committee l lieve, fairly represents a majority of the loyal voters of the State.

Appended hereto is a copy of the various orders and proclamations issued in regard the election of State officers, delegates to the constitutional convention, and member the legislature, and also a copy of election laws and instructions relative to the duties commissioners of elections, issued for the guidance of officers in conducting said electic

Messrs. Cutler and Smith, the claimants for seats, were duly elected Senators by t legislature which convened on the 3d day of October, 1864, and but for the fact that, pursuance of an act of Congress passed on the 13th day of July, 1861, the inhabitants the State of Louisiana were declared to be in a state of insurrection against the Unit States and all commercial intercourse between them and the citizens of other States d clared to be unlawful, which condition of things had not ceased at the time of the rec ganization of the State government and the election of Messrs. Cutler and Smith, yo committee would recommend their immediate admission to seats.

The persons in possession of the local authorities of Louisiana having rebelled agai the authority of the United States and her inhabitants having been declared to be in state of insurrection in pursuance of a law passed by the two Houses of Congress, yo committee deem it improper for this body to admit to seats Senators from Louisia till by some joint action of both Houses there shall be some recognition of an existi State government acting in harmony with the Government of the United States a recognizing its authority.

Your committee therefore recommend for adoption, before taking definite action up the right of the claimants to seats, the accompanying joint resolution:

Resolved by the Senate and House of Representatives of the United States of America Congress assembled, That the United States do hereby recognize the government of t State of Louisiana inaugurated under and by the convention which assembled on t

6th day of April, A. D. 1864, at the city of New Orleans, as the legitimate government of said State, entitled to the guarantee and all other rights of a State government under the Constitution of the United States.

CREDENTIALS OF MR. HAHN.

THURSDAY, *March* 2, 1865.

Mr. Doolittle presented a certified copy of the proceedings of the legislature of the State of Louisiana, showing that the Hon. Michael Hahn was elected a Senator by the legislature of that State for the term of six years commencing on the 4th day of March, A. D. 1865; which were read.

Objection being made by Mr. Davis to the reception of the paper,

On motion by Mr. Trumbull,

Ordered, That it lie on the table.

[The debate is found on page 1278 of the Congressional Globe, part 2, 2d sess. 38th Cong.]

[Special session of Senate, March, 1865.]

THURSDAY, *March* 9, 1865.

On motion by Mr. Doolittle, the credentials of the Hon. Michael Hahn, elected a Senator by the legislature of Louisiana, were taken from the files and presented to the Senate.

On motion by Mr. Doolittle,

Ordered, That the further consideration thereof be postponed to the next session of Congress.

FRIDAY, *June* 20, 1884.

Mr. Lapham, from the Committee on Privileges and Elections, to whom was referred the petition of Mrs. Maria G. Underwood, administratrix of John C. Underwood, deceased, submitted a report (No. 748) thereon, accompanied by the following resolution for consideration. [Resolution found at end of report.]

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Hoar (chairman), Cameron of Wisconsin, Sherman, Frye, Lapham, Saulsbury, Vance, Pugh, and Jonas.]

IN THE SENATE OF THE UNITED STATES.

JUNE 20, 1884.—Ordered to be printed.

Mr. Lapham, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom was referred the petition of Maria G. Underwood, administratrix of John C. Underwood, deceased, asking payment for salary and mileage of the said John C. Underwood from the 4th of March, 1865, to the 4th of March, 1871, have considered the same, and respectfully report:

That on the 9th day of December, 1864, the petitioner's intestate was duly elected a Senator from the State of Virginia for the term of six years from the 4th day of March, 1865; that he received a certificate of such election in the words and figures following:

VIRGINIA, *to wit:*

The legislature of this State having, on the 9th day of December, 1864, in pursuance of the Constitution of the United States, chosen John C. Underwood, esquire, a Senator from this State for six years from the 4th day of March next, I, Francis H. Peirpoint, being governor of the Commonwealth, do hereby certify the same to the Senate of the United States.

Given under my hand and the seal of the Commonwealth this the 14th day of December, 1864.

[SEAL OF VIRGINIA.] F. H. PEIRPOINT.

By the governor:

W. J. COWING,
Secretary of the Commonwealth.

That the said John C. Underwood duly presented his certificate and credentials as aforesaid, on the 9th day of March, 1865, to the Senate of the United States, and made efforts to obtain his seat in the said Senate, traveling from his home in Virginia to the city of Washington from time to time, and incurred a very considerable expenditure of time and money in so doing; that on the same day of the election of said John C. Underwood one Joseph Segar was also duly elected a Senator from said State and presented his credentials to the Senate; that neither the said Segar nor the said Underwood were admitted to take their seats in the Senate; that the said Segar duly presented his memorial to the Senate during the Forty-fifth Congress, at its second session, asking payment for his salary and mileage as Senator from the 9th of December, 1864, to the 4th of March, 1869, which was referred to the Committee on Privileges and Elections, and the committee recommended the passage of a resolution in words and figures following:

"*Resolved*, That there be allowed and paid out of the contingent fund of the Senate to Joseph Segar the sum of $5,000, in full compensation for his expenses in prosecuting his claim to a seat in the Senate as a Senator from the State of Virginia."

Which resolution was adopted by the Senate, and the amount therein named was paid to the said Segar. The report of the committee in Segar's case contained the following statements:

"If the petitioner had been admitted to the seat which he claimed, his salary and mileage would have amounted to more than $21,000. He was not admitted, and having never performed the duties of a Senator, under the most recent precedent he is not entitled to compensation and mileage as such. By the same precedent, if he prosecuted in good faith and on reasonable grounds a claim for such seat, he should be allowed a moderate compensation for the expenses incurred by him in such prosecution."

A majority of the inhabitants of Virginia were opposed to the secession of the State and its union with the confederate government. After the ordinance of secession was adopted, about fifty-five counties in the northwestern portion of the State united in sending delegates to the convention at Wheeling, on the 11th of June, 1861.

* Taken from Senate Reports, 1st sess. 48th Cong., No. 748.

This was done under the advice of the Attorney-General and of President Lincoln, that such counties would be recognized as the lawful government of the State of Virginia if they remained loyal to the Government. The convention thus assembled chose a governor, lieutenant-governor, and council to fill the offices vacated by those who had seceded. John S. Carlile and Waitman T. Willey were chosen United States Senators to occupy the seats vacated by Messrs. Mason and Hunter. They were admitted to their seats in the Senate at the extra session on the 4th of July, 1861. Five members of the House of Representatives were admitted to their seats in that body at the same time, and thus the existence and validity of the government of Virginia were recognized by both Houses of Congress. On the 20th of August, 1861, the convention passed an ordinance to provide for the formation of the State of West Virginia. Delegates from the counties to compose the new State met in convention at Wheeling, framed a constitution for the new State, which was submitted to a vote of the people of said counties in April, 1862, and ratified by an almost unanimous vote.

Governor Peirpoint, the newly installed governor of Virginia, called an extra session of the legislature for the 6th of May, 1862, at which session an act was passed giving the assent of the State of Virginia to the formation of the new State. This consent, with a copy of the proposed constitution, were transmitted to Congress with an application for the admission of West Virginia as a new State. Congress passed an act providing for its admission, which was approved by the President on the 31st of December, 1862, and West Virginia thus became a State in the Union on an equal footing with the original States. The act provided that until the next census the new State should have three members in the House of Representatives. The legislature at Wheeling passed an act authorizing the removal of the seat of government from Wheeling to Alexandria. An election for State officers was held in the fall of 1863. Governor Peirpoint was elected for a full term. Three members of Congress were chosen, and a Senator to take the place of Mr. Willey, who had been elected a Senator from the new State of West Virginia. The Senators and Representatives thus chosen took their seats at the opening of the session of Congress in December, 1863, and continued to hold them until the close of that Congress, on the 4th of March, 1865, except Senator Bowden, who died in the winter of 1865, and Mr. Joseph Segar was chosen to fill his place for the unexpired term.

All the counties represented in the government of Alexandria, as well as those composing the State of West Virginia, were excepted from the proclamation of the President declaring certain States and parts of States in rebellion, and were recognized by the Government as loyal to the United States. The legislature at Alexandria called a convention, which forever abolished slavery in the State of Virginia, and the legislature adopted the thirteenth amendment to the Constitution of the United States. The votes of twenty-seven States were required to make the ratification of the thirteenth amendment valid, and Virginia, under the Alexandria government, made the twenty-seventh.

If Virginia was not a State the thirteenth amendment was never adopted, and slavery has never been legally abolished, nor has West Virginia been constitutionally admitted as a State. In May, 1865, President Johnson issued a proclamation to re-establish the authority of the United States and execute the laws within the limits of the State of Virginia, recognizing Governor Peirpoint as the governor of the State, and directing that he should be aided, so far as might be necessary, in the extension of the State government throughout the limits of the State.

When Congress met in December, 1865, the war had closed, and the State of Virginia, as well the loyal as the disloyal portion, with the other disloyal States, were on some terms to be restored to their relations with the Federal Government. On the first day of the session a resolution was adopted in the House for the appointment of a joint committee of the two Houses to consider that subject and report by bill or otherwise, and providing that until such report no Senator or Member should be admitted to a seat, and that the credentials of all Senators and Members should be referred to said committee. When the resolution came up in the Senate for action Senator Anthony moved to amend the enacting clause so as to make it a concurrent instead of a joint resolution, and also moved to strike out the following words:

"And until such report shall have been made, and final action by Congress on, no member shall be received into either House from any of the so-called Confederate States, and all papers relating to the representation in said States shall be referred to said committee without debate."

Senator Anthony stated that this portion of the resolution was a violation of the Constitution, which made the Senate the exclusive judge of the election returns and qualifications of its own members and also a violation of the practice of the Senate by cutting off debate. Both amendments were adopted by the Senate, and the House concurred in the resolution as amended.

This left Messrs. Segar and Underwood, who had been chosen Senators to represent

Virginia from the 4th of March, 1865, free to press their claims to the seats wl
been occupied in the Senate since the reorganization of the State government
It was their duty to the State to press their claims to such seats, and they wo
violated their obligations of honor if they had failed to do so.

The joint committee of the two Houses made no report until the month of Ju

The Senators and Representatives from Tennessee who were denied their se
opening of the session were admitted to their seats in the month of July, 1866.

The Senators-elect from Virginia had a right to expect the same results, an
faith pressed their claims for recognition.

The portion of Virginia from which they were elected was expressly excepted
President's proclamation declaring the inhabitants of certain States to be in r
also in the proclamation of emancipation and in the amnesty proclamation.

In the proclamation of emancipation Virginia was included, except the fo
counties designated as West Virginia, and also the counties of Berkeley, Accoma
ampton, Elizabeth City, York, Princess Anne, and Norfolk, including the citie
folk and Portsmouth. These formed the State of Virginia, after the cession
Virginia, and had a population entitling the State to three Representatives in th
They had abolished slavery in 1864, and as to them the proclamation was unnec

The government of Virginia, as organized in 1861, continued its functions,
standing the reconstruction acts, until Governor Peirpoint's term expired in Ap
The convention that framed the new constitution in 1867 expressly validated a
nized as binding all the legislative and judicial acts of the State of Virginia du
whole period.

Still later on, in an action brought by the State of Virginia against West Vir
Supreme Court of the United States affirmed the validity of the State gover
Virginia and held that its assent in annexing three counties to West Virgini
were not included in the original cession, was valid and binding upon the Stat

Upon these facts and upon the precedents long established, it seems to your c
that Messrs. Segar and Underwood would be entitled to their full salaries as
Mr. Sykes, of Alabama, who had been elected by a legislature pronounced by tl
as illegal, was allowed his compensation and mileage from March, 1873, to May,
day he was denied his seat. Mr. Pinchback was allowed pay from March, 1873,
was elected, to March, 1876, when he was refused a seat, aggregating $16,966.90.

The practice of the Senate, however, in this respect has been modified, an
cases of Ray and McMillen a compensation for reasonable and moderate expe
was allowed. Following this rule, the Senate allowed Mr. Segar the sum of $
his expenses incurred in the prosecution of his claim without an itemized or
account of the same.

The fact that Mr. Underwood held and was receiving a salary to another offi
tutes no objection to such allowance. Members of the House of Representativ
the Senate have been granted such allowances while at the same time draw
salaries. Messrs. Kellogg, Ingalls, and Butler were paid their expenses unde
circumstances. If it was the duty of Judge Underwood to make an effort to o
seat he should be paid his expenses, although he could not accept the seat when
to him without vacating his other office.

The cases of said Underwood and Segar are alike in all respects, except the
which they were chosen. It is true no actual service as Senator was rendered b
but each stood ready to perform his duties whenever the Senate should allow
the said Underwood performed no such service was the fault of the Senate, not b
precedents fully justify the allowance to said Segar and the allowance aske
petitioner. The House of Representatives has frequently paid large sums of mon
successful contestants for seats in that body; and the Senate, at the same sessio
which the allowance was made to Segar, also paid Messrs. Ray and McMillen
neither of them were allowed to occupy their seats in the Senate. The valuabl
rendered by said Underwood to the Government in its struggle for national su
are matters of history and need not here be repeated. We think the sum all
paid to Mr. Segar is a precedent which should be followed in this case, and rec
the passage of the accompanying resolution:

Resolved, That there be allowed and paid out of the contingent fund of the S
Maria G. Underwood, administratrix of John C. Underwood, deceased, the sum o
in full compensation for the time and expenses of the said John C. Underwood i
cuting his claim to a seat in the Senate as a Senator from the State of Virginia.

SATURDAY, *July* 5

On motion by Mr. Lapham, the Senate proceeded to consider the resolution
from the Committee on Privileges and Elections June 20, 1884, to pay Maria G

wood, widow of John C. Underwood, the sum of $5,000, in full compensation for expenses of said John C. Underwood in prosecuting his claim to a seat in the Senate.

After debate,

On motion by Mr. Plumb, the Senate proceeded to consider bill S. 2203, &c.

[The debate is found on pages 6067–6070 of the Congressional Record, vol. xv, part 6.]

[Second session of the Forty-eighth Congress.]

FRIDAY, *February* 20, 1885.

Mr. Lapham submitted the following resolution for consideration:

"*Resolved*, That there be paid out of the contingent fund of the Senate to Alice E. Underwood, executrix of the last will and testament of Maria G. Underwood, administratrix of John C. Underwood, deceased, the sum of $5,000, in full compensation for the time and expense of the said John C. Underwood in prosecuting his claim to a seat in the Senate as a Senator from the State of Virginia."

SATURDAY, *February* 21, 1885.

The Presiding Officer (Mr. Allison in the chair) laid before the Senate the resolution yesterday submitted by Mr. Lapham, to pay the executrix of the widow of John C. Underwood his expenses in prosecuting his claim to a seat in the Senate; and the resolution was referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

THURSDAY, *February* 26, 1885.

Mr. Jones, of Nevada, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the resolution submitted by Mr. Lapham on the 20th instant, to pay the heirs of John C. Underwood the amount of his expenses in contesting his right to a seat in the Senate, reported it without amendment.

[Special session of Senate, March, 1885.]

TUESDAY, *March* 10, 1885.

Mr. Hoar submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

"*Resolved*, That there be allowed and paid out of the contingent fund of the Senate, to Alice G. Underwood, executrix of the last will and testament of Maria G. Underwood, administratrix of John C. Underwood, deceased, the sum of $5,000, in full compensation for the time and expenses of the said John C. Underwood in prosecuting his claim to a seat in the Senate as a Senator from the State of Virginia."

THURSDAY, *March* 19, 1885.

Mr. Chace, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the resolution submitted by Mr. Hoar on the 10th instant, to pay the expenses of the late John C. Underwood in prosecuting his claim to a seat in the Senate, reported it without amendment.

[Thirty-ninth Congress—First session.]

JOHN P. STOCKTON,

Senator from New Jersey from March 4, 1865, *till March* 27, 1866, *and from March* 4, 1869, *till March* 3, 1875.

Mr. Stockton's credentials were presented and he took his seat in the Senate December 4, 1865 At the same time a memorial of members of the legislature protesting against his admission to a seat in the Senate was presented and ordered to lie on the table. January 8, 1866, the credentials and memorial were referred to the Committee on the Judiciary. January 30 the committee reported that the facts in regard to Mr. Stockton's election were as follows: There was no law in New Jersey prescribing the "manner" of electing Senators, other than that they "shall be appointed by the senate and general assembly in joint meeting assembled." The joint meeting electing Mr. Stockton passed a resolution that the candidate receiving a plurality of votes of the members present should be declared duly elected. The joint assembly consisted of eighty-one members. All were present when the vote for Senator took place. Mr. Stockton received 40 votes and Mr. Ten Eyck and other persons 41. The question before the Senate was whether a joint convention could prescribe a plurality rule. The committee reported that for the purpose of choosing Senators the joint convention is regarded as the legislature, so that it is vested by the Constitution of the United States with authority to prescribe the manner of electing Senators; and recommended the adoption of a resolution that Mr. Stockton was entitled to his seat. Some Senators maintained that in the absence of any law a majority was by the parliamentary law of the land necessary to constitute a valid election, and that the legislature alone, acting in a legislative capacity through its two branches separately, was competent to prescribe that a plurality should elect. March 23 the resolution reported by the committee passed the Senate, Mr. Stockton voting, by a vote of 22 yeas to 21 nays. March 26 the Senate voted to reconsider the vote agreeing to the resolution. It then resolved "that the vote of Mr. Stockton be not received in determining the question of his seat in the Senate." March 27 the Senate resolved by a vote of 23 yeas to 20 nays that Mr. Stockton was not entitled to his seat.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journal, 1st sess. 39th Cong., and the report of the committee, with the exception of certain accompanying documents, from Senate Reports, 1st sess 39th Cong., No. 4.

Special references to the debates of each day, which are found in the Congressional Globe, part 2, 1st sess. 39th Cong., are inserted below.

MONDAY, *December* 4, 1865.

Mr. Wright presented the credentials of the Hon. John P. Stockton, elected a Senator by the legislature of the State of New Jersey for the term of six years commencing on the 4th day of March, A. D. 1865.

The credentials were read and the oaths prescribed by law were administered to Mr. Stockton, and he took his seat in the Senate.

Mr. Cowan presented a memorial of members of the senate and house of representatives of the State of New Jersey protesting against the admission of the Hon. John P. Stockton to a seat in the Senate as a Senator from that State.

Ordered, That it lie on the table.

MONDAY, *January* 8, 1866.

On motion by Mr. Cowan,

Ordered, That the credentials of the Hon. John P. Stockton, United States Senator from the State of New Jersey, together with the memorial of the members of the senate and house of assembly of the State of New Jersey protesting against the admission of the Hon. John P. Stockton to a seat in the United States Senate as a Senator from that State, be referred to the Committee on the Judiciary.

TUESDAY, *January* 30, 1866.

Mr. Trumbull, from the Committee on the Judiciary, to whom were referred the credentials of the Hon. John P. Stockton, elected a Senator by the legislature of the State of New Jersey, and the protest of certain members of the legislature of the said State against the validity of his election, submitted a report (No. 4), accompanied by the following resolution:

"*Resolved*, That John P. Stockton was duly elected, and is entitled to his seat, as a Senator from the State of New Jersey for the term of six years from the 4th day of March 1865."

Ordered, That the report, with the accompanying credentials and protest, be printed.

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Trumbull (chairman), Harris, Clark, Johnson, Poland, Stewart, and Hendricks.]

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1866.—Ordered to be printed.

Mr. Trumbull submitted the following report:

The Committee on the Judiciary, to whom were referred the credentials of John P. Stockton, claiming to have been elected a Senator from the State of New Jersey for six years from the 4th day of March, 1865, together with the protest of certain members of the legislature of said State against the validity of his election, submit the following report:

The only question involved in the decision of Mr. Stockton's right to a seat is whether an election by a plurality of votes of the members of the legislature of New Jersey in joint meeting assembled, in pursuance of a rule adopted by the joint meeting itself, is valid. The protestants insist that it is not, and they deny Mr. Stockton's right to a seat, because, as they say, he was not appointed by a majority of the votes of the joint meeting of the legislature.

The legislative power of the State of New Jersey is vested by the State constitution in a senate and general assembly, which are required, for legislative purposes, to meet separately, but which, for the appointment of various officers, are required to assemble in joint meeting; and when so assembled, are, by the constitution itself, styled the "legislature in joint meeting."

The constitution of New Jersey does not prescribe the manner of choosing United States Senators; as, indeed, it could not, the Constitution of the United States having vested that power, in the absence of any law of Congress, exclusively in the legislature; but it does constitute the two houses one body for the purpose of appointing certain State officers. The statute of New Jersey declares that "United State Senators, on the part of that State, shall be appointed by the senate and general assembly in joint meeting assembled;" but it does not prescribe any rules for the government of the joint meeting, nor declare the manner of election.

The practice in New Jersey has been for the joint meeting to prescribe the rules for its own government.

In 1794 fifteen rules were adopted, the first two of which are as follows:

"1. That the election of State officers during the present session be *viva voce*, unless when otherwise ordered; and that all officers be put in nomination at least one day before their election.

"2. That the chairman shall not be entitled to vote except in case of a tie, and then to have a casting vote."

The other thirteen rules related chiefly to the method of conducting the proceedings. Each joint meeting which has since assembled has adopted its own rules, usually those of the preceding joint meeting, sometimes, however, with additions or exceptions.

In 1851 the following additional rule was adopted:

"*Resolved*, That no person shall be elected to any office, at any joint meeting during the present session, unless there be a majority of all the members elected personally present, and agreeing thereto."

In 1855 the joint meeting, after adopting the fifteen rules of the preceding joint meeting, added the following:

"That all candidates for office, upon receiving a majority of the votes cast by this joint meeting, shall be declared duly elected."

The joint meeting of 1861 adopted the rules of the preceding joint meeting for its own government, among which were the following:

"1. That the election of State officers during the present session be *viva voce*, unless when otherwise ordered.

"15. That in all questions the chairman of the joint meeting be called upon to vote in his turn as one of the representatives in the senate or assembly; but that he have no casting vote as chairman.

"16. That all candidates for office, upon receiving a majority of the votes cast by this joint meeting, shall be declared to be duly elected."

The same rules were adopted by each joint meeting from 1861 to 1865.

The joint meeting which assembled February 15, 1865, and at an adjourned session of which Mr. Stockton was appointed Senator, adopted, at its first meeting, the rules of

* A reference to the documents accompanying the report is given in the head-note.

the preceding joint meeting, except the sixteenth rule, in lieu of which the following was adopted:

"*Resolved*, That no candidate shall be declared elected unless upon receiving a majority of the votes of all the members elected to both houses of the legislature."

After having appointed various officers under the rules which had been adopted at the assembling of the joint meeting, the following rule was adopted:

"*Resolved*, That the vote for county judges and commissioners of deeds be taken by acclamation, and that the counties in which vacancies exist be called in alphabetical order."

Acting under this rule, quite a number of officers were appointed by acclamation. Not completing its business the joint meeting adjourned from time to time till March 15, when the following rule was adopted:

"*Resolved*, That the resolution that no candidate shall be declared elected unless upon receiving a majority of the votes of all the members elected to both houses of the legislature be rescinded, and that any candidate receiving a plurality of votes of the members present shall be declared duly elected."

Every member of both houses, eighty-one in all, was present and voting when the above resolution was passed, and it was carried by a vote of 41 in the affirmative, of whom eleven were senators and thirty representatives, to 40 in the negative, of whom ten were senators and thirty representatives. The joint meeting then proceeded to the election of a United States Senator, with the following result:

Hon. John P. Stockton, 40 votes; Hon. J. C. Ten Eyck, 37 votes; J. W. Wall, 1 vote; P. D. Vroom, 1 vote; F. T. Frelinghuysen, 1 vote; H. S. Little, 1 vote.

Whereupon John P. Stockton, having received a plurality of all the votes cast, was declared duly elected. The joint meeting then proceeded to the election of various other officers, having completed which, it rose.

The credentials of Mr. Stockton are under the great seal of state, signed by the governor and in due form. No objection appears to have been made at the time to the election. Its validity is now called in question by a protest dated March 20, 1865, and signed by eight senators and thirty members of the general assembly. The Constitution of the United States declares that the Senate of the United States "shall be composed of two Senators from each State, chosen by the legislature thereof," and that "the times, places, and manner of holding election for Senators and Representatives shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

The right to choose United States Senators in a joint meeting of the two houses which compose the legislature of a State has been too long and too frequently exercised to be now brought in question. This has been the manner of election in some States from the beginning, and is now the manner in most of them.

For the purpose of choosing United States Senators the joint meeting of the two houses is regarded as the legislature, and especially would this be so in New Jersey, where the joint meeting is by the constitution of the State denominated a legislature. It has uniformly been held that when the two branches of a legislature meet in joint convention to elect a United States Senator they are merged into one and act as one body, so that an election may be effected against the entire vote of the members of one house if the person voted for receive the requisite number of votes from members of the other. It being, then, settled that the two houses of a legislature in joint meeting assembled constitute the legislature, vested by the Constitution of the United States with authority, acting as one body, to elect a Senator, the question is: Did the joint meeting of the senate and general assembly of New Jersey, duly convened in pursuance of a resolution previously concurred in by each house separately, choose John P. Stockton United States Senator?

That it was competent for a plurality to elect, if a law to that effect had been prescribed by competent authority, will hardly be questioned. This is the rule very generally, if not universally, adopted in the election of members of the House of Representatives, who are "chosen every second year by the people of the several States," and no one questions the validity of the election of a Representative by a plurality vote when the law authorizes a plurality to elect. It is however insisted, and truly, that no law of New Jersey authorizes a plurality to elect. The laws of New Jersey are silent on this subject, but they do authorize a joint meeting of the two houses of the legislature to appoint a Senator, and it has been the uniform practice of this joint meeting since the foundation of the Government to prescribe the rules for its own government. These rules as to the number of votes necessary to effect an election have varied at different times, sometimes requiring a majority of all the members elected to both houses of the legislature, sometimes a majority only of those present, and in the case under consideration only a plurality.

Suppose, under the rule first stated, but seventy-nine members had been present in the joint meeting, and forty had voted for the same person, would he have been elected; and

if not, why not? Seventy-nine out of eighty-one would have constituted a quorum, and forty would have been a majority of those present. The only reason why such a vote would not have made an election would be the existence of the rule adopted by the joint meeting, declaring that "no candidate should be elected unless receiving a majority of the votes of all the members elected to both houses of the legislature." While that rule was in force no presiding officer would have thought of declaring a candidate elected, nor would any candidate have supposed himself elected because he received a majority of the votes cast, unless such majority was a majority of all the members elected to the legislature. Under the other rule, "that a person receiving a majority of the votes of those present should be declared elected," who would doubt the validity of an election by 31 out of 60 votes if only so many had been cast? If the joint meeting had the right to prescribe at one time that it should require a majority of all elected to the legislature to elect, at another time that a majority of those present might elect, and at still another time that elections might be had by acclamation, it had the right to prescribe that a plurality should elect; and when any candidate received a plurality he thereupon became elected, not simply by the will of those who voted for him, but by the will of the joint meeting, which had previously, by a majority vote, resolved that such plurality should elect.

It might be urged in this case, with much plausibility, that inasmuch as the constitution of New Jersey recognizes the two houses in joint meeting as a legislature, that such joint meeting was the very body on whom the Constitution of the United States had conferred the power to prescribe "the times, places, and manner of holding elections for Senators;" but your committee prefer placing the authority of the joint meeting to prescribe the plurality rule on the broader ground that in the absence of any law, either of Congress or the State, on the subject, a joint meeting of the two houses of a legislature, duly assembled and vested with authority to elect a United States Senator, has a right to prescribe that a plurality may elect, on the principle that the adoption of such a rule by a majority vote in the first instance makes the act, subsequently done in pursuance of such majority vote, its own.

The committee recommend for adoption the following resolution:

Resolved, That John P. Stockton was duly elected and is entitled to his seat as a Senator from the State of New Jersey for the term of six years from the 4th day of March, 1865.

THURSDAY, *March* 22, 1866.

On motion by Mr. Trumbull, the Senate proceeded to consider the resolution reported by the Committee on the Judiciary on the 30th of January, on the right of the Hon. John P. Stockton to a seat in the Senate of the United States as a Senator from the State of New Jersey; which resolution is as follows:

"*Resolved*, That John P. Stockton was duly elected and is entitled to his seat as a Senator from the State of New Jersey for the term of six years from the 4th day of March, 1865."

On motion by Mr. Clark to amend the resolution in line 1, by inserting after the word "was" the word "not," and after the word "is" the word "not," and,

After debate and the consideration of executive business, the Senate adjourned.

[The debate is found on pages 1564–1573 of the Congressional Globe referred to in the head-note.]

FRIDAY, *March* 23, 1866.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary on the 30th of January, on the right of the Hon. John P. Stockton to a seat in the Senate of the United States as a Senator from the State of New Jersey; which resolution is as follows:

"*Resolved*, That John P. Stockton was duly elected and is entitled to his seat as a Senator from the State of New Jersey for the term of six years from the 4th day of March, 1865."

After debate, on the question to agree to the amendment proposed by Mr. Clark to the resolution, to wit, in line 1 insert after the word "was" the word "not," and after the word "is" the word not," it was determined in the negative—yeas 19, nays 21.

On motion by Mr. Clark, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Grimes, Howe, Kirkwood, Lane of Indiana, Nye, Pomeroy, Ramsey, Sherman, Sprague, Sumner, Wade, and Yates.

Those who voted in the negative are Messrs. Anthony, Buckalew, Cowan, Davis, Foster, Guthrie, Harris, Henderson, Hendricks, Johnson, Lane of Kansas, McDougall, Morgan, Nesmith, Norton, Poland, Riddle, Saulsbury, Stewart, Trumbull, and Willey.

So the amendment was not agreed to.

On the question to agree to the resolution, it was determined in the affirmative—yea 22, nays 21.

On motion by Mr. Fessenden, the yeas and nays being desired by one-fifth of the Sen ators present,

Those who voted in the affirmative are Messrs. Anthony, Buckalew, Cowan, Davis Foster, Guthrie, Harris, Henderson, Hendricks, Johnson, Lane of Kansas, McDougall Morgan, Nesmith, Norton, Poland, Riddle, Saulsbury, Stewart, Stockton, Trumbull and Willey.

Those who voted in the negative are Messrs. Brown, Chandler, Clark, Conness, Cragin Creswell, Fessenden, Grimes, Howe, Kirkwood, Lane of Indiana, Morrill, Nye, Pome roy, Ramsey, Sherman, Sprague, Sumner, Wade, Wilson, and Yates.

So it was

Resolved, That John P. Stockton was duly elected and is entitled to his seat as Senator from the State of New Jersey for the term of six years from the 4th day o March, 1865.

[The debate is found on pages 1589–1602 of the Congressional Globe referred to in th head-note.]

MONDAY, *March* 26, 1866.

A motion was made by Mr. Sumner that the Journal of Friday, 23d March, 1866, b amended by striking out the vote of Mr. Stockton on the question of his right to a sea in the Senate.

Pending debate thereon, the following message was received, &c.

* * * * * * *

After further debate,

Mr. Sumner asked and obtained leave of the Senate to withdraw his motion; and,

The motion having been withdrawn,

On motion by Mr. Poland that the Senate reconsider its vote on Friday last agreeing to the following resolution:

"*Resolved*, That John P. Stockton was duly elected and is entitled to his seat as a Senator from the State of New Jersey for the term of six years from the 4th day of March, 1865,"

It was determined in the affirmative; and

The question recurring upon said resolution,

Mr. Sumner, by unanimous consent, submitted the following resolution:

"*Resolved*, That the vote of Mr. Stockton be not received in determining the question of his seat in the Senate."

The Senate proceeded, by unanimous consent, to consider the said resolution; and

On motion by Mr. Sumner that the resolution be referred to the Committee on the Judiciary, with instructions to report on Thursday next, it was determined in the negative—yeas 18, nays 22.

On motion by Mr. Johnson, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Buckalew, Cowan, Davis, Guthrie, Harris, Hendricks, Johnson, Lane of Kansas, McDougall, Nesmith, Norton, Riddle, Saulsbury, Sherman, Trumbull, Van Winkle, and Willey.

Those who voted in the negative are Messrs. Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Foster, Grimes, Howard, Howe, Kirkwood, Lane of Indiana, Nye Poland, Pomeroy, Ramsey, Sprague, Sumner, Wade, Wilson, and Yates.

On the question to agree to the resolution, it was determined in the affirmative.

So it was

Resolved, That the vote of Mr. Stockton be not received in determining the questio of his seat in the Senate.

The question again recurring upon the resolution affirming the right of the Hon. Joh P. Stockton to his seat in the Senate,

On motion by Mr. Johnson that the further consideration of the resolution be post poned to Thursday next,

After debate,

On motion by Mr. Trumbull, the Senate adjourned.

[The debate is found on pages 1635–1648 of the Congressional Globe referred to in th head-note.]

TUESDAY, *March* 27, 1866.

The Senate resumed the consideration of the resolution reported by the Committee on the Judiciary, affirming the right of the Hon. John P. Stockton to his seat as a Senato rom the State of New Jersey; and

After debate,

On the question to agree to the motion, yesterday submitted by Mr. Johnson, that the

further consideration of the resolution be postponed to Thursday next, it was determined in the negative—yeas 18, nays 23.

On motion by Mr. Johnson, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Buckalew, Cowan, Davis, Guthrie, Harris, Hendricks, Johnson, Lane of Kansas, McDougall, Morgan, Nesmith, Norton, Riddle, Saulsbury, Trumbull, Van Winkle, and Willey.

Those who voted in the negative are Messrs. Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Foster, Grimes, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Nye, Pomeroy, Ramsey, Sherman, Sprague, Sumner, Wade, Wilson, and Yates.

So the motion was not agreed to.

The question recurring on the resolution,

On motion by Mr. Clark to amend the resolution by striking out after the word "Stockton," in line 1, the words "was duly elected, and is entitled to his seat as a Senator from the State of New Jersey for the term of six years from the 4th day of March, 1865," and in lieu thereof inserting, "is not entitled to a seat as Senator from the State of New Jersey for the term of six years from the 4th day of March, 1865,"

Mr. Saulsbury raised a question of order, to wit, that the proposed amendment is in effect the same proposition which the Senate had once rejected, and was therefore not in order.

The President *pro tempore* decided that the proposed amendment, being a proposition different in its terms from that upon which the Senate had voted, was not open to the objection raised, and was in order.

After debate,

On motion by Mr. Davis to amend the amendment proposed by Mr. Clark by striking out all after the word ——— in the first line, and in lieu thereof inserting,

"That the legislature of New Jersey having convened in joint meeting to choose a Senator to the Congress of the United States for six years from the 4th of March, 1865, and said legislature in such joint meeting having passed an order that such election should be made by a plurality vote of that joint meeting; and on the first ballot taken by said meeting, John P. Stockton having received 40 out of the 81 votes of the members of both houses of the legislature constituting such legislature in such joint meeting, and every other person voted for a less number, and the presiding officer of said joint meeting having then announced to it that the said John P. Stockton was elected Senator to Congress, and there being no objection or dissent expressed to said annunciation, the said John P. Stockton was duly elected a Senator from said State, and is entitled to hold his seat as such from the 4th of March, 1865,"

It was determined in the negative—yeas 15, nays 27.

On motion by Mr. Clark, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Buckalew, Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, McDougall, Morgan, Nesmith, Norton, Riddle, Saulsbury, Van Winkle, and Willey.

Those who voted in the negative are Messrs. Anthony, Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Nye, Poland, Pomeroy, Ramsey, Sherman, Sprague, Sumner, Trumbull, Wade, Williams, Wilson, and Yates.

The question recurring on the amendment proposed by Mr. Clark,

On motion by Mr. McDougall that the further consideration of the resolution be postponed to Wednesday next at 1 o'clock, it was determined in the negative—yeas 15, nays 28.

On motion by Mr. McDougall, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Buckalew, Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, McDougall, Morgan, Nesmith, Norton, Riddle, Saulsbury, Van Winkle, and Willey.

Those who voted in the negative are Messrs. Anthony, Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Nye, Poland, Pomeroy, Ramsey, Sherman, Sprague, Sumner, Trumbull, Wade, Williams, Wilson, and Yates.

On the question to agree to the amendment, it was determined in the affirmative—yeas 22, nays 21.

On motion by Mr. Clark, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Grimes, Howard, Howe, Kirkwood, Lane of Indiana, Nye, Pomeroy, Ramsey, Sherman, Sprague, Sumner, Wade, Williams, Wilson, and Yates.

Those who voted in the negative are Messrs. Anthony, Buckalew, Cowan, Davis, Doo-

little, Guthrie, Harris, Henderson, Hendricks, Johnson, Lane of Kansas, McDougall, Morgan, Nesmith, Norton, Poland, Riddle, Saulsbury, Trumbull, Van Winkle, and Willey.

So the amendment was agreed to; and

On the question to agree to the resolution as amended, it was determined in the affirmative—yeas 23, nays 20.

On motion by Mr. Hendricks, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Grimes, Howard, Howe, Kirkwood, Lane of Indiana, Nye, Pomeroy, Ramsey, Riddle, Sherman, Sprague, Sumner, Wade, Williams, Wilson, and Yates.

Those who voted in the negative are Messrs. Anthony, Buckalew, Cowan, Davis, Doolittle, Guthrie, Harris, Henderson, Hendricks, Johnson, Lane of Kansas, McDougall, Morgan, Nesmith, Norton, Poland, Saulsbury, Trumbull, Van Winkle, and Willey.

So it was

Resolved, That John P. Stockton is not entitled to a seat as Senator from the State of New Jersey for the term of six years from the 4th day of March, 1865.

On motion by Mr. Clark that the vote on the passage of the said resolution be reconsidered,

On motion by Mr. Hendricks that the further consideration of the motion to reconsider be postponed to to-morrow at 1 o'clock, it was determined in the negative—yeas 21, nays 22.

On motion by Mr. Hendricks, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Buckalew, Cowan, Davis, Doolittle, Guthrie, Harris, Henderson, Hendricks, Johnson, Lane of Kansas, McDougall, Morgan, Nesmith, Norton, Poland, Riddle, Saulsbury, Trumbull, Van Winkle, and Willey.

Those who voted in the negative are Messrs. Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Grimes, Howard, Howe, Kirkwood, Lane of Indiana, Nye, Pomeroy, Ramsey, Sherman, Sprague, Sumner, Wade, Williams, Wilson, and Yates.

On the question to agree to the motion of Mr. Clark, to reconsider the vote on the passage of the resolution, it was determined in the negative—yeas 20, nays 22.

On motion by Mr. Clark, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Buckalew, Cowan, Davis, Doolittle, Guthrie, Henderson, Hendricks, Johnson, Lane of Kansas, McDougall, Morgan, Nesmith, Norton, Poland, Riddle, Saulsbury, Trumbull, Van Winkle, and Willey.

Those who voted in the negative are Messrs. Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Grimes, Harris, Howard, Howe, Kirkwood, Lane of Indiana, Nye, Pomeroy, Ramsey, Sherman, Sprague, Sumner, Wade, Williams, Wilson, and Yates.

So the Senate refused to reconsider its vote on the passage of the resolution.

[The debate is found on pages 1666–1679 of the Congressional Globe referred to in the head-note.]

[Thirty-ninth Congress—First session.]

DAVID T. PATTERSON,

Senator from Tennessee from July 28, 1866, *to March* 3, 1869.

July 26, 1866, the credentials of Mr. Patterson, elected to fill the unexpired portion of the term beginning March 4, 1863, were presented and referred to the Committee on the Judiciary, who were instructed to inquire into his qualifications. The following day the committee reported that the only question in relation to his qualifications arose from the fact of his having held the office of circuit judge in the State of Tennessee after that State had passed an ordinance of secession; that his first term of said office having expired after the ordinance of secession was passed, he was induced by Union men to become a candidate for re-election, and was re-elected in May, 1862; that he was himself a "firm, avowed, and influential Union man;" that he allowed himself to become a candidate for re-election "solely upon the motive that he could thereby afford some aid and protection to the Union people;" that the constitution and judicial system of Tennessee remained the same after the secession of the State as before, and that no law was enforced by him as judge except such as were in force before the secession of the State. The committee recommend the adoption of a resolution that Mr. Patterson was duly qualified and entitled to hold the seat. During debate on the adoption of the resolution reported by the committee, a joint resolution was introduced in the Senate that Mr. Patterson be admitted upon his taking so much of the oath prescribed by the act of July 2, 1862, as is not included in the words, "that I have neither sought, nor accepted, nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States." This joint resolution passed the Senate, but was laid on the table in the House the same day. The Senate then passed the resolution reported by the committee, it having been amended so as to read, "*Resolved*, That the Hon. David T. Patterson, upon taking the oaths required by the Constitution and laws, be admitted to a seat in the Senate of the United States."

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 1st sess. 39th Cong., and the report of the committee, from Senate Reports, 1st sess. 39th Cong., volume 1, No. 139.

Special references to the debates of each day are inserted below.

THURSDAY, *July* 26, 1866.

Mr. Fowler presented the credentials of the Hon. David T. Patterson, elected a Senator by the legislature of the State of Tennessee for the unexpired term of six years commencing on the 4th day of March, 1863.

The credentials were read.

On motion by Mr. Sumner that the credentials be referred to the Committee on the Judiciary with instructions to inquire into the qualifications of Mr. Patterson,

After debate, it was determined in the affirmative—yeas 26, nays 14.

On motion by Mr. Sumner, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Brown, Chandler, Conness, Creswell, Edmunds, Fessenden, Foster, Harris, Henderson, Howard, Howe, Kirkwood, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Ross, Sprague, Stewart, Sumner, Trumbull, Wade, Williams, and Wilson.

Those who voted in the negative are Messrs. Buckalew, Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, Lane, McDougall, Nesmith, Norton, Sherman, Van Winkle, and Willey.

So it was

Ordered, That the credentials be referred to the Committee on the Judiciary with instructions to inquire into the qualifications of Mr. Patterson.

[The debate is found on pages 4162–4169 of the Congressional Globe referred to in the head-note.]

FRIDAY, *July* 27, 1866.

Mr. Poland, from the Committee on the Judiciary, to whom were referred the credentials of the Hon. David T. Patterson, elected a Senator by the legislature of the State of Tennessee, with instructions to inquire into the qualifications of Mr. Patterson, submitted a report (No. 139) accompanied by the following resolution:

"*Resolved*, That the Hon. David T. Patterson is duly qualified and entitled to hold a seat in the Senate of the United States from the State of Tennessee."

The Senate proceeded to consider the said resolution; and,

On motion by Mr. Clark to amend the resolution by striking out all after the word "resolved," and inserting in lieu thereof the following:

"That the Hon. David T. Patterson, upon taking the oaths required by the Constitution and laws, be admitted to a seat in the Senate of the United States,"

It was determined in the affirmative; and,

After debate,

Ordered, That the further consideration of the resolution be postponed to to-morrow.

Ordered, That the report be printed.

[The debate is found on pages 4213–4216 of the Congressional Globe referred to in the head-note.]

* * * * * * *

Mr. Trumbull asked, and by unanimous consent obtained, leave to bring in a joint resolution (S. 144) in relation to the admission of the Hon. David T. Patterson to a seat in the Senate; which was read the first and second times by unanimous consent, and considered as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That the resolution be engrossed and read a third time.

The said resolution was read the third time, by unanimous consent.

On the question, Shall the resolution pass? it was determined in the affirmative—yeas 35, nays 2.

On motion by Mr. Wade, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Buckalew, Clark, Connes, Cowan, Creswell, Davis, Doolittle, Edmunds, Foster, Fowler, Guthrie, Harris, Henderson, Hendricks, Howe, Johnson, Kirkwood, Lane, Morgan, Nesmith, Norton, Nye, Poland, Pomeroy, Ramsey, Riddle, Sherman, Stewart, Trumbull, Van Winkle, Willey, Williams, Wilson, and Yates.

Those who voted in the negative are Messrs. Chandler and Wade.

So it was

Resolved, That the resolution pass, and that the title thereof be as aforesaid.

[This joint resolution was laid on the table in the House.]

[The debate and joint resolution are found on page 4219 of the Congressional Globe referred to in the head-note.]

* * * * * * *

On motion by Mr. Poland, the Senate resumed the consideration of the resolution reported by the Committee on the Judiciary for the admission of the Hon. David T. Patterson to a seat in the Senate from the State of Tennessee; and,

On the question to agree to the resolution as amended, on the motion of Mr. Clark,

After debate, it was determined in the affirmative—yeas 21, nays 11.

On motion by Mr. Sumner, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Buckalew, Cowan, Davis, Doolittle, Edmunds, Fessenden, Foster, Guthrie, Harris, Henderson, Howe, Johnson, Kirkwood, Lane, Norton, Poland, Riddle, Sherman, Van Winkle, Willey, and Williams.

Those who voted in the negative are Messrs. Chandler, Creswell, Howard, Nye, Pomeroy, Ramsey, Ross, Sumner, Trumbull, Wade, and Yates.

So it was

Resolved, That the Hon. David T. Patterson, upon taking the oaths required by the Constitution and laws, be admitted to a seat in the Senate of the United States.

[The debate is found on pages 4242–4245 of the Congressional Globe referred to in the head-note.]

SATURDAY, *July* 28, 1866.

The Hon. David T. Patterson, elected a Senator by the legislature of the State of Tennessee for the unexpired term ending March 3, 1869, appeared, and the oaths prescribed by law being administered by the President *pro tempore* to Mr. Patterson, he took his seat in the Senate.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Trumbull (chairman), Harris, Clark, Johnson, Poland, Stewart, and Hendricks.]

IN THE SENATE OF THE UNITED STATES.

JULY 27, 1866.—Submitted.

JULY 28, 1866.—Ordered to be printed.

Mr. Poland submitted the following report:

The Committee on the Judiciary, to whom were referred the credentials of Hon. David T. Patterson, Senator-elect from the State of Tennessee, with instructions to report whether said Patterson is legally qualified to hold the office of United States Senator

: constitution of the State of Tennessee remained the same after the secession
te as before, and there was no change made in the form of the State govern-
ı their judicial system. A large majority of the people of East Tennessee were
evoted to the Union and deemed it very important for their interest and that
ion cause that the civil offices in that section of the State should be filled with
ı.

atterson was a firm, avowed, and influential Union man, and he was urgently
' the Union men of that circuit to run as a candidate for re-election as circuit
l he finally, though reluctantly, consented to do so. The opposing candidate
owed secessionist, and the issue in the election was between Union and seces-
: election was held in May, 1862, and Judge Patterson was elected over his
petitor by a large majority. At the same election most of the local offices
tion were filled by the election of Union men. At that time it was believed
ion men of East Tennessee that they would soon be relieved from rebel mili-
by the arrival of Union-forces; and they desired also to retain the civil power
vn hands. In this expectation they were disappointed, and soon rebel bands
ered through that region, and the Union people were subjected to great hard-
cruel oppression. When Judge Patterson was thus re-elected judge he did
se he would be commissioned by the governor of the State, who was a seces-
ıt, after some considerable delay, a commission was sent to him with peremp-
s to take the oath. On the receipt of his commission and order to take the
ge Patterson delayed and hesitated, and consulted other leading Union men
proper course for him to take. They advised and urged him to take the oath;
uld thereby afford protection to some extent to Union men against acts of law-
ıce on the part of the rebels, and that if he did not accept the office and take
he office would be filled by a rebel, and they would then be oppressed by the
ell as the military power of the rebels. Judge Patterson yielded to their
nd arguments, and went before a magistrate and took the oath which the Ten-
gislature had prescribed, which, in substance, was that he would support the
on of Tennessee and the constitution of the Confederate States. Judge Patter-
ed at the time to the magistrate that he owed no allegiance to the confederate
nt, and that he did not consider that part of the oath as binding him at all.
ne there were rebel troops in the neighborhood, and Judge Patterson had good
believe that his refusal to take the oath would subject him to arrest and im-
ıt, if not worse treatment; but we do not find that he was actuated at all by
considerations, but acted solely upon the motive that he could thereby afford
ınd protection to the Union people, and also prevent the office from falling into
t would use it to oppress them.

nnessee at this time was in a very disturbed and distracted condition. The
as full of bands of armed rebels, and lawless violence held sway. Business
y suspended, and no civil business was done in the courts. Judge Patterson
r terms of court in counties where he could organize grand juries of Union

As before stated, the constitution and election laws and judicial system of Tenne remained the same after the secession of the State as before, and Judge Patterson elected judge the last time under the same State constitution and laws as existed at first election, and no laws were enforced by him as judge except such as were in fc before the secession of the State.

The committee are all satisfied that during the entire rebellion Judge Patterson an earnest, firm, and devoted Union man, and suffered severely in support of his pri ples. In accepting the office of judge, and taking the official oath, he did not intend hostility to the authority or Government of the United States, nor did he intend to knowlege any allegiance to, or any friendship for, the confederate government, but ac throughout with a sincere desire to benefit and preserve the Union and the Governm of the United States. He always denied the authority of the confederate governm over him, and feels an entire willingness and ability to take the oath required upon admission to a seat in the Senate. The committee recommend the following resolutic

Resolved, That the Hon. David T. Patterson is duly qualified and entitled to hold seat in the Senate of the United States as a Senator from the State of Tennessee.

[Fortieth Congress—First and second sessions.]

PHILIP F. THOMAS,

of Maryland.

March 18, 1867, the credentials of Mr. Thomas, elected for the term beginning March 4, 1867, were presented. The following day the credentials were referred to the Committee on the Judiciary, who were authorized by a resolution of March 20 to send for persons and papers. December 18, the committee submitted the evidence taken, and reported that they found nothing sufficient to debar Mr. Thomas from his seat unless it be found in the fact of his son having entered the service of the confederacy, and in the circumstances connected therewith, in regard to which point the committee express no opinion. A resolution was then submitted that Mr. Thomas be admitted to the seat. February 20, 1868, the Senate resolved that Mr. Thomas "having voluntarily given aid, countenance, and encouragement to persons engaged in armed hostility to the United States" was not entitled to take the oath of office or hold the seat. Some Senators maintained that in a case of doubt, where there is absence of evidence showing conclusively that a person had thus voluntarily given aid, &c., the person should be admitted if willing to take the oath of office. Extracts from speeches given below show the conduct of Mr. Thomas which was claimed to be "voluntarily giving aid," &c.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 40th Cong.; the report of the committee from Senate Reports, 40th Cong., 2d sess., No. 5, with the exception of the evidence and documents printed with it; and extracts from speeches from Congressional Globe, 2d sess. 40th Cong., part 1, page 679, and part 2, page 1145.

Special references to the debates of each day are inserted below.

MONDAY, *March* 18, 1867.

Mr. Johnson presented the credentials of the Hon. Philip F. Thomas, elected a Senator by the legislature of the State of Maryland for the term of six years commencing on the 4th day of March, 1867; which were read.

On motion by Mr. Howard that the credentials be referred to the Committee on the Judiciary,

After debate,

On motion by Mr. Grimes,

Ordered, That the further consideration of the motion be postponed to to-morrow.

[The debate is found on pages 171–180 of the Congressional Globe, 1st sess. 40th Cong.]

TUESDAY, *March* 19, 1867.

The Senate resumed the consideration of the motion of Mr. Howard of yesterday, to refer the credentials of the Hon. Philip Francis Thomas, elected a Senator by the legislature of the State of Maryland, for the term commencing on the 4th day of March, 1867, to the Committee on the Judiciary; and the motion was agreed to.

WEDNESDAY, *March* 20, 1867.

Mr. Howard submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Committee on the Judiciary, to whom have been referred the credentials of Hon. P. F. Thomas, lately chosen a Senator of the United States by the legislature of Maryland, be authorized to send for persons and papers for the purposes of said reference."

WEDNESDAY, *March* 27, 1867.

Mr. Howard presented a letter from the president of the National Bank of Commerce of New York, addressed to him, accompanied by the annual statement to the shareholders of the Bank of Commerce, in New York, May 12, 1862; which was referred to the Committee on the Judiciary.

[A statement by Mr. Howard is found on page 372 of the Congressional Globe, 1st sess. 40th Cong.]

TUESDAY, *April* 2, 1867.

Mr. Johnson presented a letter addressed to him by the Hon. Philip F. Thomas, Senator-elect from the State of Maryland, relating to a report of the Bank of Commerce to their shareholders, dated March 12, 1862, and presented to the Senate on the 27th of March last by the Hon. Mr. Howard; which, with the accompanying papers, was referred to the Committee on the Judiciary.

[The debate is found on pages 821–824 of the Congressional Globe, 1st sess. 40th Cong.]

WEDNESDAY, *December* 18, 1867.

Mr. Johnson, from the Committee on the Judiciary, to whom were referred on the 20th of March last the credentials of Philip F. Thomas, Senator-elect from the State of Maryland, beg leave to report:

That they have taken the evidence submitted herewith, and that they find nothing sufficient, in the opinion of the committee, to debar said Thomas from taking his seat, unless it be found in the fact of the son of said Thomas having entered the military service of the confederacy, and in the circumstances connected with that fact or relating to it, and without the expression of an opinion in regard to this point, they report the whole evidence to the Senate.

[The committee consisted of Messrs. Trumbull, Stewart, Frelinghuysen, Edmunds, Conkling, Johnson, and Hendricks.]

On motion by Mr. Johnson,

Ordered, That the report and accompanying evidence be printed.

Mr. Johnson submitted the following resolution for consideration:

"*Resolved*, That the Hon. Philip F. Thomas, Senator-elect from Maryland, be admitted to his seat on his taking the oaths prescribed by the Constitution and laws of the United States."

Ordered, That it lie on the table, and be printed.

MONDAY, *January* 6, 1868.

On motion by Mr. Johnson, the Senate proceeded to consider the resolution submitted by him on the 18th of December, to admit Philip F. Thomas, a Senator-elect from the State of Maryland, to his seat in the Senate; and,

After debate,

Ordered, That the further consideration of the resolution be postponed to to-morrow.

[The debate is found on pages 320–330 of the Congressional Globe, part 1, 2d sess. 40th Cong.]

MONDAY, *January* 20, 1868.

The Senate resumed the consideration of the resolution submitted by Mr. Johnson on the 18th of December, to admit Philip F. Thomas, Senator-elect from the State of Maryland, to his seat in the Senate; and,

After debate, and the consideration of executive business, the Senate adjourned.

[The debate is found on pages 632–635 of the Congressional Globe, part 1, 2d sess. 40th Cong.]

TUESDAY, *January* 21, 1868.

The Senate resumed, &c.

[The debate is found on pages 653–662 of the Congressional Globe, part 1, 2d sess. 40th Cong.]

WEDNESDAY, *January* 22, 1868.

The Senate resumed, &c.

[The debate is found on pages 678–686 of the Congressional Globe, part 1, 2d sess. 40th Cong.]

WEDNESDAY, *February* 12, 1868.

The Senate resumed, &c.

THURSDAY, *February* 13, 1868.

The Senate resumed the consideration of the resolution submitted by Mr. Johnson on the 18th December last, to admit Philip F. Thomas, Senator-elect from the State of Maryland, to his seat in the Senate.

On motion by Mr. Sumner to amend the resolution by striking out all after the word "resolved," and inserting in lieu thereof the following:

"That Philip F. Thomas, Senator-elect from Maryland, cannot be admitted to take the oath of office required by the Constitution and laws, inasmuch as he allowed his minor son to leave the paternal house to serve as a rebel soldier, and gave him at the time $100 in money, all of which was 'aid,' 'countenance,' or 'encouragement' to the rebellion, which he was forbidden to give; and further, inasmuch as in forbearing to disclose and make known the treason of his son to the President, or other proper authorities, according to the requirement of the statute in such cases, he was guilty of misprision of treason as defined by existing law,"

After debate, the Senate adjourned.

[The debate is found on pages 1144–1156 of the Congressional Globe, part 2, 2d sess. 40th Cong.]

FRIDAY, *February* 14, 1868.

The Senate resumed, &c.

[The debate is found on pages 1165–1177 of the Congressional Globe, part 2, 2d sess. 40th Cong.]

MONDAY, *February* 17, 1868.

The Senate resumed, &c.

[The debate is found on pages 1205–1210 of the Congressional Globe, part 2, 2d sess. 40th Cong.]

TUESDAY, *February* 18, 1868.

The Senate resumed, &c.

[The debate is found on pages 1232–1243 of the Congressional Globe, 2d sess. 40th Cong.]

WEDNESDAY, *February* 19, 1868.

The Senate resumed the consideration of the resolution submitted by Mr. Johnson, on the 18th of December last, to admit Philip F. Thomas, Senator-elect from the State of Maryland, to his seat in the Senate; and the question being on the amendment proposed by Mr. Sumner to the resolution,

After debate,

Mr. Sumner withdrew his amendment to the said resolution.

On motion by Mr. Conkling to amend the resolution by striking out all after the word "resolved," and inserting in lieu thereof:

"That, in the judgment of the Senate, Philip F. Thomas, Senator-elect from Maryland, cannot with truth take the oath prescribed by the act of Congress approved July 2, 1862, and that therefore he be not allowed to take said oath,"

After further debate,

Mr. Conkling withdrew his amendment to the said resolution; and

The question then recurred on agreeing to the resolution submitted by Mr. Johnson; and

After further debate, it was determined in the negative—yeas 21, nays 28.

On motion by Mr. Drake, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Bayard, Buckalew, Cole, Davis, Dixon, Doolittle, Fessenden, Frelinghuysen, Grimes, Hendricks, Johnson, Norton, Patterson of Tennessee, Ross, Saulsbury, Tipton, Trumbull, Van Winkle, Willey, and Williams.

Those who voted in the negative are Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Fowler, Harlan, Henderson, Howard, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Thayer, Wade, Wilson, and Yates.

So the resolution was not agreed to; and

Thereupon

Mr. Drake submitted the following resolution for consideration:

"*Resolved*, That Philip F. Thomas, having voluntarily given aid, countenance, and encouragement to persons engaged in armed hostility to the United States, is not entitled to take the oath of office as a Senator of the United States from the State of Maryland, or to hold a seat in this body as such Senator; and that the President *pro tempore* of the Senate inform the governor of the State of Maryland of the action of the Senate in the premises."

The Senate proceeded to consider the said resolution; and

On the question to agree thereto, it was determined in the affirmative—yeas 27, nays 20.

On motion by Mr. Drake, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Drake, Ferry, Fowler, Harlan, Henderson, Howard, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Thayer, Wade, Wilson, and Yates.

Those who voted in the negative are Messrs. Anthony, Bayard, Buckalew, Cole, Davis, Dixon, Doolittle, Fessenden, Frelinghuysen, Hendricks, Johnson, Norton, Patterson of Tennessee, Ross, Saulsbury, Tipton, Trumbull, Van Winkle, Willey, and Williams.

So it was

Resolved, That Philip F. Thomas, having voluntarily given aid, countenance, and encouragement to persons engaged in armed hostility to the United States, is not entitled to take the oath of office as a Senator of the United States from the State of Maryland, or to hold a seat in this body as such Senator; and that the President *pro tempore* of the

Senate inform the governor of the State of Maryland of the action of the Senate in the premises.

[The debate is found on pages 1260–1271 of the Congressional Globe, part 2, 2d sess. 40th Cong.]

[Extract from remarks of Mr. Doolittle, of Wisconsin, in support of the right of Mr. Thomas, delivered in the Senate January 22, 1868, and found on page 679 of the Congressional Globe, part 1, 2d sess. 40th Cong.]

"Now, Mr. President, the two facts which are relied upon by those who oppose the admission of Mr. Thomas are these: First, that he resigned his office in the Cabinet of Mr. Buchanan; and second, that when his son left him to join the rebellion, he gave his son $100 in money. I maintain that both of those facts are susceptible of a double construction. I admit you may give a construction to either of them which would tend to show his guilt, that he sympathized with or countenanced the rebellion; but I maintain, on the other hand, that both of those facts are entirely consistent with his innocence. Take the first fact, the fact of his resignation. It is said that he resigned his position in the Cabinet of Mr. Buchanan because he did not believe with Mr. Buchanan that he had a right to maintain a military force in the harbor of Charleston. That is what is alleged. Suppose that to be true; does that show that Mr. Thomas was in favor of the rebellion? It shows that Mr. Thomas had a wrong opinion as to the power of this Government. It shows that Mr. Thomas was of opinion that the Government either had not the power or that it would be against good policy for the Government to exert the power by force to hold the harbor of Charleston.

"Do we not know it to be a fact that hundreds and thousands of men from their education were led to believe and did believe that the Government of the United States had not the power by force of arms to hold a State in the Union? The great mass, I may say, of the Southern people were educated in that belief. I have no doubt that a great many persons in the State of Maryland were educated in that belief, and had been for a whole generation. The right of a State to separate from the Union was a doctrine which had been inculcated in all the States of the South, in the universities of the South, in the pulpits of the South, in the press of the South. I may say that a whole generation had been reared under the trainings and teachings of that very doctrine, that a State had a right to withdraw itself from the Union, and that the allegiance which the citizen owed in any State was an allegiance to the State first, and to the Union afterward. I agree that this is a most fatal heresy, a heresy which led to this rebellion, and which bathed the whole land in blood, costing the South two hundred thousand or three hundred thousand of the lives of their ablest and strongest and best, and costing us half a million more. But, sir, it was an opinion entertained by many, and even if Mr. Thomas entertained that opinion I maintain that the holding of that opinion was not of itself treasonable. It did not make him guilty in any respect of the crime of treason, unless he gave his countenance and support to the rebellion.

"What does he say in this letter of resignation? He says that he is not able to concur in the views entertained by President Buchanan 'touching the authority, under existing laws, to enforce the collection of the customs at the port of Charleston.' He states to Mr. Buchanan that he does not agree with him in opinion, and for that reason he proposes to withdraw from the Cabinet. Is there in that fact anything which goes to show that Mr. Thomas was in favor of the rebellion? No, sir. It may show that Mr. Thomas did not believe that we had the power by force of arms then to enforce the collection of the revenues in the harbor of Charleston. You remember that as long ago as 1833 a question arose about enforcing the revenue laws in the harbor of Charleston, and the celebrated force bill was brought forward and passed in 1832 or 1833, I believe. But that law was not standing upon the statute-book in 1860. That law was only temporary, and Mr. Thomas may have been of the opinion that it required new legislation on the part of Congress before you could resort to force to collect the duties in the harbor of Charleston; and because he disagreed with Mr. Buchanan, rather than embarrass him he tendered his resignation and retired from the Cabinet. I insist that this act of Mr. Thomas is susceptible of a construction in accordance with his entire innocence of any connection with the rebellion.

"Then, as to the other fact—the fact that he gave to his son on the morning when he left home $100 in money—I agree that if he gave that money to his son with a view to aid him on his way to the rebellion it would be susceptible of a construction which would make him guilty of aiding the rebellion. But, sir, what are the facts stated? His son states that he had made his arrangements to go, that he had determined to go, that he informed his father that he was then ready to go, and would go. The father told him the ground, and the only ground, upon which he gave him this money. It was not to aid him to go to the rebellion, but that in case he was imprisoned or in suffering he might have a sum of money with him. It was the prompting of his paternal heart,

while with tears in his eyes he was protesting against his son going. I submit that this is susceptible of two constructions; and if it be susceptible of two constructions, one of which is consistent with his innocence, we are bound, in the ordinary charity which administers justice among men, to give to it the innocent rather than the guilty construction.

"Mr. President, we may establish here a precedent of the most dangerous character. When the person elected, against whose veracity I believe no one has ever raised a question, whose private character as an individual stands above reproach, comes here and is ready in the presence of this Senate and of Almighty God to put his hands upon the Gospels and take the oath that he never did countenance or aid the rebellion in any way whatever, I say, in the absence of any evidence which goes to show conclusively, against any reasonable doubt, that he is guilty, we are bound to receive him. We tender this oath to him; we make him the witness in the case. In equitable proceedings, if a party chooses to make the other party his witness, he is bound by his testimony. And I say if we choose to put this oath to the applicant and call him here to swear whether he is loyal to the Government of the United States or not, and if he is willing to do it, knowing him as we do, his character as it stands before us being above reproach as an individual, what right have we not to believe the statement which he makes if the facts which appear are susceptible of a construction in accordance with innocence rather than with guilt?"

[Extract from remarks of Mr. Sumner, of Massachusetts, against the right of Mr. Thomas, delivered in the Senate February 13, 1868, and found in the Congressional Globe, part 2, 2d sess. 40th Cong., page 1145.]

"A great debate on the question how loyalty shall be secured in the rebel States is for the time silenced in order to consider how loyalty shall be secured in this Chamber. Everywhere in the rebel States disloyal persons are struggling for power; and now at the door of the Senate we witness a similar struggle. If disloyalty cannot be shut out of this Chamber, how can we hope to overcome it elsewhere?

"More than once at other times I have discussed the question of loyalty in the Senate. But this was anterior to the adoption of the fourteenth constitutional amendment. The case is plainer now than then, inasmuch as there is now an explicit text requiring loyalty as a 'qualification.' Formerly we were left to something in the nature of inference; now the requirement is plain as language can make it. By the new amendment it is provided that 'no person shall be a Senator or Representative in Congress who, having previously taken an oath as a member of Congress, or as an officer of the United States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.'

"These words are precisely applicable to the present case. They lay down a rule from which there is no appeal; and this rule is not merely in the statutes, but in the Constitution. It is the plain declaration that loyalty is a requirement in a Senator and Representative. If we do not apply it to ourselves now it is difficult to see with what consistency we can apply it to others. Your course here will affect the meaning of this constitutional amendment, if not its validity for the future.

"I do not stop to argue the question, if that amendment is now a part of the Constitution; for I would not unnecessarily occupy your time, nor direct attention from the case which you are to decide. For the present I content myself with two remarks: first, the amendment has already been adopted by three-fourths of the States that took part in proposing it, and this is enough, for the spirit of the Constitution is thus satisfied; and, secondly, it has already been adopted by 'the *legislatures* of three-fourths of the several States' which have legislatures, thus complying with the letter of the Constitution. Therefore by the spirit of the Constitution, and also by its letter, this amendment is now a part of the Constitution, binding on all of us. As such I invoke its application to this case. In face of this positive peremptory requirement it is impossible to see how loyalty can be other than a 'qualification.' In denying it you practically set aside this amendment.

"But even without this amendment, I cannot doubt that the original text is sufficiently clear and explicit. It is nowhere said in the Constitution that certain specified requirements and none others shall be 'qualifications' of Senators. The word 'qualifications,' which plays such a part in this case, occurs in another connection, where it is provided that 'each House shall be the judge of the elections, returns, and *qualifications* of its own members.' What these 'qualifications' may be is to be found elsewhere. Searching the Constitution from beginning to end we find three 'qualifications,' which come under the head of *form*, being (1) age, (2) citizenship, and (3) inhabitancy in the State. But behind and above these is another 'qualification,' which is of *substance*, in contradiction to *form* only. So supreme is this that it is placed under the safeguard of an oath. This is loyalty. It is easy to see how infinitely more *important* is this than either of the others—

than age, than citizenship, or than inhabitancy in the State. A Senator failing in either of these would be incompetent by the letter of the Constitution; but the Republic might not suffer from his presence. On the other hand, a Senator failing in loyalty is a public enemy, whose presence in this council Chamber would be a certain peril to the Republic.

"It is vain to say that loyalty is not declared to be a 'qualification.' I deny it. Loyalty is made a 'qualification' in the amendment to the Constitution; and then again in the original text, when in the most solemn way possible it is distinguished and guarded by an oath. Men are familiarly said to 'qualify' when they take the oath of office, and thus the language of common life furnishes an authentic interpretation to the Constitution.

"But no man can be allowed to take the oath as Senator when, on the evidence before the Senate, he is not competent. If it appear that he is not of sufficient age, or of the required citizenship or inhabitancy, he cannot be allowed to go to that desk. Especially if it appear that he fails in the all-important 'qualification' of loyalty, he cannot be allowed to go to that desk. A false oath, taken with our knowledge, would compromise the Senate. We who consent will become parties to the falsehood. We shall be parties in the offense. It is futile to say that the oath is one of purgation only, and that it is for him who takes it to determine on his conscience if he can take it. The Senate cannot forget the evidence; nor can its responsibility in the case be swallowed up in any process of individual purgation. On the evidence we must act and judge accordingly. The 'open sesame' of this Chamber must be something more than the oath of a suspected applicant.

"According to Lord Coke, 'an infidel cannot be sworn' as a witness. This was an early rule which has since been softened in our courts. But under the Constitution of the United States and existing statutes a '*political infidel* cannot be sworn' as a Senator. Whatever may be his inclination or motive he must not be allowed to approach your desk. The country has a right to expect that all who enter here shall have a sure and well-founded loyalty, above all question or 'suspicion.' And such I insist is the rule of the Constitution and of Congress.

"As if to place the question beyond all doubt, Congress by positive enactment requires that every Senator, before admission to his seat, shall swear that he has 'voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility' to the United States. Here is little more than an interpretation of the Constitution. The conclusion is plain. No person who has voluntarily given even 'countenance' or 'encouragement' to another engaged in the rebellion can be allowed to take that oath.

"After this statement of the rule, the question arises, if Philip F. Thomas can be permitted to take the oath at your desk, or, in other words, to 'qualify' as a Senator of the United States. Is he competent? This is a question of evidence.

"The ample discussion of the facts in this case, and their singular plainness, supersede the necessity of all details. The atmosphere about Mr. Thomas and his acts are harmonious. From the beginning we find him enveloped in coldness and indifference while his country was in peril. But, observing him more closely, we are shocked by two acts of positive disloyalty, one of which is the natural prelude of the other. The first muttering of the rebellion found him a member of the Cabinet of Mr. Buchanan; but when this uncertain President proposed the succor of our troops at Charleston, already menaced with war, Mr. Thomas withdrew from the patriotic service. He resigned his seat, following the lead of Cobb, Thompson, and Floyd. A man is known by the company he keeps. His company at this time were traitors. And the act they united in doing was essentially disloyal. As the rebellion assumed the front of war they all abandoned their posts—some to join the rebellion and mingle with its armies; Mr. Thomas more prudently to watch the course of events in Maryland, ready to lift his arm also when his State pronounced the word. This concerted desertion was in itself a conspiracy against the Government; and, in the case of Mr. Thomas, who was Secretary of the Treasury, it was a blow at the national credit, which it was his special duty to guard. It was an act of disloyalty to be blasted by indignant history, even if your judgment fails now. And this was the first stage in this record.

"Meanwhile the war rages. Armies are marshaled. Battles ensue. Washington itself is beleaguered. The Republic trembles with peril. But Mr. Thomas continues in the seclusion of his home, enveloped in the same disloyal atmosphere, and refusing always the oath of allegiance. At last in 1863 an only son arrives at the age of eighteen. Though still a minor he is already of the military age. Naturally filled with the sentiments of his father's fireside, he seeks to maintain them by military service. He is like his father, but with the ardor of youth instead of the caution of years. He avows his purpose to enlist in the rebel army, thus to levy war against his country and adhere to its enemies. All this was treason—plain, palpable, unquestionable, downright treason. Instead of detaining his son; instead of keeping him back; instead of interposing a paternal veto; instead of laying hands gently upon him; instead of denouncing him to the

magistrate, all of which the father might have done, he deliberately lets him go, and then, to cap the climax of criminal complicity, furnishes the means for his journey and his equipment. He gives $100. The father is not rich, and yet he gives this considerable sum. Few soldiers started with such ample allowance. Thus it stands. The father, who has already deserted his post in the Cabinet and has refused to take the oath of allegiance to his country, contributes a soldier to the rebellion, and that soldier is his only son. To complete and assure the great contribution, he contributes a sum of money also. If all this accumulated disloyalty, beginning in a total renunciation of every patriotic duty, and finally consummated by an act of flagrant, unblushing enormity, is not 'aid and comfort' or 'countenance' or 'encouragement' to the rebellion, it is difficult to say what can be. There must be new dictionaries for these familiar words, and they must receive a definition down to this day unknown. They must be treated as thread or gossamer, when they should be links of iron.

[Fortieth Congress—Second session.]

JOHN T. JONES AND AUGUSTUS H. GARLAND VS. AL DER McDONALD AND BENJAMIN F. RICE,

of Arkansas.

Arkansas had been without representation in Congress from 1861. June 23, 1868, the cre Mr. McDonald and Mr. Rice, elected April 15, 1868, to fill the unexpired terms ending M and 1873, were presented. On the same day there were presented from the files of the Sen tials of Mr. Jones and Mr. Garland, purporting to be certificates of their elections for the s The two latter credentials had been originally presented to the Senate and ordered to table in the years 1866 and 1867, soon after the respective elections. They were again lie on the table. It appears from the debate that the elections of Messrs. Jones and Ga place when a provisional government existed in Arkansas. A motion was then made t dentials of Messrs. McDonald and Rice be referred to the Committee on the Judiciary. T was determined in the negative, and Messrs. McDonald and Rice took their seats. It ap the debate on their credentials that some Senators were of opinion that the credentials referred to a committee for the reasons that they did not in some particulars conform t July 25, 1866, regulating the election of Senators, and that the election had taken place passage of the act declaring Arkansas entitled to representation in Congress.

The history of the case here given consists of a transcript of the proceedings of the Sena to it from the Senate Journal, 40th Cong., 2d sess.

The debate is found on pages 3384–3389 of the Congressional Globe, part 4, 2d sess. 40th

TUESDAY, *June* 2

Mr. Thayer presented the credentials of Benjamin F. Rice, elected a Senat legislature of the State of Arkansas for the unexpired term commencing on th of March, 1867; which were read.

Mr. Thayer presented the credentials of Alexander McDonald, elected a Sena legislature of the State of Arkansas for the unexpired term commencing on th of March, 1865; which were read.

Mr. Davis presented from the files of the Senate papers purporting to be the c of John T. Jones and Augustus H. Garland, chosen Senators by the legislat State of Arkansas for the unexpired terms commencing on the 4th day of Ma and on the 4th day of March, 1867.

Mr. Howard submitted a motion that the papers presented by Mr. Davis l table.

Mr. Hendricks asked to have the papers read; and

Objection being made thereto,

The President *pro tempore* submitted the question to the Senate, to wit: papers be read? and it was determined in the affirmative—yeas 30, nays 16.

On motion by Mr. Hendricks, the yeas and nays being desired by one-fifth o ators present,

Those who voted in the affirmative are Messrs. Bayard, Cole, Conkling, Corbet Davis, Dixon, Doolittle, Drake, Edmunds, Fessenden, Fowler, Harlan, Hender dricks, Johnson, McCreery, Morgan, Morrill of Vermont, Morton, Patterson of N shire, Patterson of Tennessee, Ramsey, Ross, Sherman, Sprague, Trumbull, Va Willey, and Yates.

Those who voted in the negative are Messrs. Cattell, Chandler, Conness, Ferry huysen, Howard, Howe, Morrill of Maine, Nye, Pomeroy, Stewart, Sumner, Th ton, Wade, and Wilson.

So it was decided that the papers be read; and

The Secretary having read the same, the question recurred on the motion of ard that the papers presented by Mr. Davis lie on the table; and

On the question to agree thereto, it was determined in the affirmative.

A motion was then submitted by Mr. Davis that the credentials of Benjami and the credentials of Alexander McDonald be referred to the Committee on ciary; and

On the question to agree thereto, it was determined in the negative; and

The oaths prescribed by law were administered to Mr. Rice and Mr. McDona President *pro tempore*, and they took their seats in the Senate.

[Fortieth Congress—Second session.]

WILLIAM MARVIN vs. THOMAS W. OSBORN, *of Florida.*

Florida had been without representation in Congress from 1861. June 30, 1868, the credentials of Mr. Osborn, elected to fill the unexpired term ending March 3, 1873, were presented. They were signed by Harrison Reed, governor, and certified that he had been elected June 18, 1868. A motion was made that the credentials be referred to the Committee on the Judiciary. It appears from the debate that by a resolution of the Florida legislature the thirteenth and fourteenth amendments had been "adopted." It was maintained by some that this was not a sufficient "ratification" of the amendments. Pending debate on the motion to refer Mr. Osborn's credentials, the credentials of Mr. Marvin, claiming to have been elected for the same term, were presented. They were signed by David S. Walker as governor, and certified that Mr. Marvin had been elected November 28, 1866. The motion to refer Mr. Osborn's credentials to a committee was determined in the negative, and Mr. Osborn was admitted to the seat. No further action was taken on Mr. Marvin's credentials. It appears from the debate on them that Mr. Marvin had been elected before Congress had declared that Florida was entitled to representation in Congress, it having declared that Florida was not entitled to appoint electors for President and Vice-President.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 40th Cong., 2d sess.

The debates are found on pages 3598-3607 of the Congressional Globe, part 4, 2d sess. 40th Cong.

TUESDAY, *June* 30, 1868.

Mr. Howe presented a resolution of the legislature of the State of Florida ratifying the amendments to the Constitution of the United States known as Articles XIII and XIV; which was read.

Mr. Howe presented the credentials of Thomas Ward Osborn, elected a Senator of the United States by the legislature of the State of Florida for the unexpired term commencing March 4, 1867; which were read.

A motion was made by Mr. Drake that the resolution of ratification of the legislature of Florida and the credentials of Mr. Osborn be referred to the Committee on the Judiciary.

After debate,

Mr. Doolittle presented a paper purporting to be the credentials of William Marvin, elected a Senator of the United States by the legislature of the State of Florida on the 28th of November, 1866, for the term of six years commencing on the 4th day of March, 1867, and asked that the paper be read.

Objection to the reading of the paper having been made by Mr. Howe,

The President *pro tempore* submitted the question to the Senate, Shall the paper be read? and it was determined in the affirmative; and

The said paper having been read, the question recurred on the motion of Mr. Drake to refer the resolution of the legislature of Florida and the credentials of Mr. Osborn to the Committee on the Judiciary.

On the question to agree thereto, it was determined in the negative—yeas 16, nays 30.

On motion by Mr. Conness, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Buckalew, Davis, Doolittle, Drake, Edmunds, Fessenden, Hendricks, Howard, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Norton, Patterson of New Hampshire, and Vickers.

Those who voted in the negative are Messrs. Cameron, Cattell, Chandler, Cole, Conness, Corbett, Cragin, Ferry, Frelinghuysen, Harlan, Howe, McDonald, Morgan, Morton, Nye, Pomeroy, Ramsey, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Wade, Willey, Williams, Wilson, and Yates.

So the motion of Mr. Drake was not agreed to.

Mr. Howe submitted a motion that the oaths prescribed by law be now administered to Mr. Osborn.

A motion was made by Mr. Drake that the credentials of Mr. Osborn lie on the table, and that the resolution of the legislature of Florida ratifying the amendments to the Constitution of the United States be referred to the Committee on the Judiciary.

Mr. Conness raised the question of order, to wit, that the motion to administer the oaths of office to Mr. Osborn having been first made, and being in the nature of a privileged question, had precedence over the motion of Mr. Drake.

The President *pro tempore* sustained the question of order raised by Mr. Conness, and decided the motion of Mr. Drake not in order; and

On the question, Shall the oaths prescribed by law be now administered to Mr. Osborn?

On motion by Mr. Drake that the further consideration of said question be postponed to to-morrow, it was determined in the negative—yeas 13, nays 31.

On motion by Mr. Conness, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Buckalew, Corbett, Davis, Doolittle, Drake, Edmunds, Fessenden, Hendricks, McCreery, Morrill of Vermont, Norton, and Vickers.

Those who voted in the negative are Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Cragin, Ferry, Frelinghuysen, Harlan, Howard, Howe, McDonald, Morgan, Morrill of Maine, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Stewart, Sumner, Thayer, Tipton, Trumbull, Wade, Willey, Williams, Wilson, and Yates.

So the motion to postpone the further consideration of the question to administer the oaths to Mr. Osborn was not agreed to; and

On the question, Shall the oaths prescribed by law be now administered to Mr. Osborn? it was determined in the affirmative—yeas 33, nays 6.

On motion by Mr. Drake, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Frelinghuysen, Harlan, Howard, McDonald, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Stewart, Sumner, Thayer, Tipton, Trumbull, Wade, Willey, Williams, Wilson, and Yates.

Those who voted in the negative are Messrs. Buckalew, Davis, Doolittle, Johnson, McCreery, and Vickers.

So the motion was agreed to; and

The oaths prescribed by law were administered to Mr. Osborn by the President *pro tempore*, and he took his seat in the Senate.

[Third session Fortieth Congress, and Forty-first Congress.]

HILL AND MILLER, AND WHITELEY AND FARROW,

of Georgia.

December 7, 1868, the credentials of Joshua Hill, elected for the unexpired portion of the term beginning March 4, 1867, were presented. December 10, his credentials were referred to the Committee on the Judiciary. January 11, 1869, the credentials of H. V. M. Miller, elected for the unexpired portion of the term beginning March 4, 1865, were presented and referred to the same committee. January 25, 1869, the committee reported on the credentials of Mr. Hill. The chief question to be decided was whether Georgia had complied with the conditions of an act providing for her admission to representation. This act provided that "no person prohibited from holding office under the United States or any State by section 3 of the proposed amendment to the Constitution of the United States, known as article 14, shall be deemed eligible to any office in said State unless relieved from disability as provided in said amendment." The committee reported that some of the members composing the legislature electing Mr. Hill were disqualified under the above provision; that the legislature had gone through with the forms of an investigation which did "not appear to have been conducted in good faith," and had found none of the members disqualified; that "the election and qualification of members of the legislature, where the existence of any legislature authorized to act as such is not involved, cannot be inquired into by the Senate in determining the right of a Senator to his seat;" but that "the question involved in this case is not whether persons not entitled to seats in the legislature were received by that body and allowed to vote upon the election of a Senator; but whether the body assuming to be the legislature violated the conditions upon which it was allowed to organize by permitting disloyal persons to participate in its proceedings." The committee submitted a resolution that Mr. Hill "ought not now to be admitted" to take his seat. There was a minority report. February 17, 1869, the committee reported against admitting Mr. Miller to his seat. There was no written report. In the next session of Congress the credentials of Messrs. Hill and Miller were again referred to the committee, who reported them back, and they were laid on the table. February 14, 1870, in the next session, the credentials were again referred to the committee. A new election having been held, the credentials of Richard H. Whiteley, elected for the unexpired portion of the term beginning March 4, 1865, and the credentials of Henry P. Farrow, elected for the unexpired portion of the term beginning March 4, 1867, were presented July 15, 1870, and ordered to lie on the table. No reports were made during this session on the credentials; but an act was passed (approved December 22, 1869) to promote the reconstruction of Georgia; a report was made March 2, 1870 (No. 58), on the question whether the legislature had been reorganized in accordance with the provisions of this act; and an act was passed (approved July 15, 1870) declaring that the State was entitled to representation in Congress. The proceedings of the Senate relating to these acts are not included in the proceedings given below. December 3, 1870, in the next session of Congress, the credentials of Messrs. Whiteley and Farrow were referred to the committee. January 23, 1871, the committee reported on the credentials of the four claimants that Messrs. Hill and Miller, elected under the organization of 1868, were duly elected, but that Mr. Miller, having acted as a surgeon in the rebel army, could not take the oath required by the act of July 2, 1862. They recommended the adoption of the resolution that Mr. Hill was entitled to his seat. There was a minority report recommending the adoption of a resolution declaring Messrs. Whiteley and Farrow (who had been elected under the organization of 1870) entitled to seats. February 1, 1871, the resolution reported by the committee was agreed to and Mr. Hill took his seat in the Senate. February 24, 1871, a joint resolution prescribing an oath to be taken by Mr. Miller was approved, and Mr. Miller took his seat.

The proceedings of the Senate relating to this joint resolution are not included in theextr acts given below.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to the case from Senate Journals, 3d sess. 40th Cong., and 1st, 2d, and 3d sess. 41st Cong., with extracts from the reports. A portion of report No. 58, 2d sess. 41st Cong., referred to above, is included in the report made January 23, 1871, given below.

Special references to the debates of each day are inserted below, and references to the reports are given in foot-notes.

[Third session of the Fortieth Congress.]

CREDENTIALS OF MR. HILL.

MONDAY, *December* 7, 1868.

Mr. Sherman presented the credentials of Joshua Hill, elected a Senator by the general assembly of the State of Georgia for the unexpired portion of the term commencing on the 4th day of March, 1867; which were read.

Mr. Drake moved that the said credentials be referred to the Committee on the Judiciary when said committee shall have been appointed.

Pending debate,

Mr. Wilson presented a memorial of the representatives of the colored voters of the State of Georgia, in convention assembled, in relation to the action of the legislature of that State in expelling twenty-nine colored members from the said legislature; which was read; and,

After further debate,

On motion by Mr. Sherman,

Ordered, That the credentials of Mr. Joshua Hill lie on the table.

[The debate is *found on pages 1–5 of Congressional* Globe, part 1, 3d sess. 40th Cong.]

THURSDAY, *December* 10, 1868.

On motion by Mr. Sherman,

Ordered, That the credentials of Joshua Hill, a Senator-elect from the State of Georgia, together with the letter of the governor of the State of Georgia in relation to the execution of the laws known as the reconstruction laws, and the memorial of the representatives of the colored voters of Georgia in convention assembled, in relation to the expulsion of certain members from the legislature of that State, be referred to the Committee on the Judiciary.

MONDAY, *January* 25, 1869.

Mr. Stewart, from the Committee on the Judiciary, to whom were referred the credentials of Joshua Hill, elected a Senator by the legislature of Georgia for the unexpired portion of the term commencing on the 4th day of March, 1867, submitted a report (No. 192), accompanied by the following resolution:

"*Resolved*, That Joshua Hill, claiming to be Senator-elect from Georgia, ought not now to be permitted to take a seat in this body."

Mr. Trumbull asked and obtained leave of the Senate to present the views of the minority of the Committee on the Judiciary in relation to the right of Joshua Hill, Senator-elect from the State of Georgia, to a seat in the Senate; which were ordered to be printed with the report of the committee submitted by Mr. Stewart.

REPORT OF COMMITTEE ON CREDENTIALS OF MR. HILL—MAJORITY AND MINORITY.*

[The committee consisted of Messrs. Trumbull (chairman), Stewart, Frelinghuysen, Edmunds, Conkling, Rice, Carpenter, and Hendricks.]

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1869.—Ordered to be printed.

Mr. Stewart, from the Committee on the Judiciary, submitted the following report:

The Committee on the Judiciary, to whom were referred the credentials of Joshua Hill, claiming to be Senator-elect from Georgia, beg leave to submit the following report:

The credentials referred to your committee are in the usual form, and if the State of Georgia is entitled to representation in Congress, Mr. Hill ought to be permitted to take his seat.

From the fact of the reference, your committee feel called upon to go behind the credentials to ascertain if any reasons exist why Mr. Hill should not be admitted to the Senate.

On the 21st of May, 1868, the President transmitted to Congress a proposed constitution for the State of Georgia which had been framed by a convention assembled under the reconstruction acts of Congress and ratified by the people. On the 25th June, following, Congress passed an act which, among other things, provided for the admission of Georgia to representation upon compliance with certain conditions therein named, the most important of which was that the legislature of Georgia should duly ratify the amendment to the Constitution of the United States known as the fourteenth amendment. The act further provides that after compliance with the required conditions "the officers of said State duly elected and qualified under the constitution hereof shall be inaugurated without delay; but no person prohibited from holding office under the United States or any State by section 3 of the proposed amendment to the Constitution of the United States known as article 14 shall be deemed eligible to any office in said State unless relieved from disability as provided in said amendment."

The obvious design of this provision was to prevent the new organization from falling under the control of enemies of the United States, so as to defeat the reconstruction of the State.

The right of Mr. Hill (if regularly elected) to a seat in the Senate depends upon three important considerations:

First. Did the legislature of Georgia, regularly organized in accordance with the Constitution of the United States, the laws of Congress, and the constitution of Georgia, *duly* ratify the fourteenth amendment, and comply with the various conditions imposed by the act of June 25, 1868?

Second. Have the legislature and people of Georgia, subsequent to such compliance with said acts of Congress, committed such acts of usurpation and outrage as to place the State in a condition unfit to be represented in Congress?

Third. Whether, on the whole case, taking the action of Georgia both before and since the pretended ratification of the fourteenth amendment, a civil government has been established in that State which Congress ought to recognize?

These questions must be answered by the law and the facts.

* Taken from Senate Reports, 3d sess. 40th Cong., No. 192. The accompanying documents, making *pages 5–21 and 38–40 of the report*, are omitted.

The district commander, General Meade, by a general order dated June 25, 1868, declared the result of the election; Rufus B. Bullock being elected governor, and among the members elected to the legislature in that order were thirty-one colored men—three senators and twenty-eight representatives. (See Exhibit No. 1.) By a proclamation of the governor-elect, in pursuance of the act of June 25, 1868, the legislature of Georgia convened on the 4th July following. On the 8th July the organization of the two houses was effected, and all persons declared elected were allowed to take their seats.

When the governor-elect was notified of the action of the two houses, he addressed a communication to General Meade, commander of the district, informing him of the fact, and also that it was alleged that a number of the members of the general assembly who had taken their seats, and one or more officers of that body, were not eligible under the act of June 25, 1868, by reason of their having taken an official oath to support the Constitution of the United States, and subsequently had given aid and comfort to the enemies thereof. General Meade on the same day replied to the communication, and among other things desired the governor-elect to communicate to the legislature that he could not recognize any act of that body as valid or allow the same to be executed until satisfactory evidence was produced that all persons excluded by the fourteenth amendment were deprived of their seats in both houses. Whereupon the two houses went through the form of an investigation. But from the evidence before your committee the investigation does not appear to have been conducted in good faith, or with any intention either of finding the facts or of excluding persons known to be disqualified. A committee was appointed in each house. In the senate the majority of the committee found all the members qualified; but there was a minority report which gave an abstract of the evidence and found four senators disqualified. The evidence consisted of the admissions of the senators themselves; which if true, they should have been excluded. Yet the senate passed a resolution, under the operation of the previous question, admitting them all. These facts appear in the official correspondence between Governor Bullock and General Meade in regard to the organization of the Georgia legislature. (See Exhibit A.) There were three reports in the house. The majority report found two members disqualified; one of the minority reports found still another member disqualified, but the other minority report found that all were qualified. The last report was adopted by the house under the operation of the previous question. To illustrate the manner in which the investigation was conducted, a copy of the proceedings of the legislature on the 16th, 17th, and 18th days of July, 1868, as reported in the Atlanta Daily Era, and forwarded to the State Department, is attached to this report. (See Exhibits A, B, and C.) It is alleged that an impartial investigation would have shown from thirty to forty members of the legislature disqualified under the fourteenth amendment; and although your committee have not been able to fully investigate this matter, but, from the evidence before them, they have little doubt that the number was large, as the exhibit hereto attached will tend to establish. For the purposes of this report, however, your committee did not deem it necessary to ascertain the number of disqualified persons admitted. But the fact that any were knowingly admitted was not only a violation of the fourteenth amendment, and a failure to comply with the requirements of Congress, but manifests a disposition to disobey and defy the authority of the United States. If one could be admitted why not all? And will it be contended that if the entire body had been composed of men who had usurped the functions of the legislature, against the express provisions of the reconstruction acts, they could have complied with the provisions of those acts so as to create any obligation on the part of Congress to receive their Senators and Representatives?

Your committee are of opinion that the act of June 25, 1868, which required that the constitutional amendment should be duly ratified, must be held to mean that it must be ratified by a legislature which has in good faith substantially complied with all the requirements of law providing for its organization. It is true that after this pretended investigation by the two houses of the eligibility of their members the district commander recognized the validity of their proceedings, and permitted the State officers to be inaugurated and the State government to go into operation. On the 21st day of July the legislature passed a resolution of ratification of the fourteenth amendment and the other resolution required by the act of June 25, 1868.

On the 28th of July, 1868, the legislature went into joint convention for the election of United States Senators. Joshua Hill received 110 votes; Joseph E. Brown, 94 votes, and A. H. Stevens, 3 votes, whereupon Mr. Hill was declared elected United States Senator for the term ending March 3, 1873.

It is quite probable that Mr. Hill received votes of persons who were not qualified to hold seats in the legislature more than sufficient to constitute his majority and secure his election, but your committee do not propose to investigate that question. The election and qualification of members of the legislature, where the existence of any legislature authorized to act as such is not involved, cannot be inquired into by the Senate in determining the right of a Senator to his seat. Your committee hold that the question

involved in this case is not whether persons not entitled to seats in the legislature were received by that body and allowed to vote upon the election of a Senator, but whether the body assuming to be the legislature violated the conditions upon which it was allowed to organize by permitting disloyal persons to participate in its proceedings. It may be contended that although the matters hereinbefore set forth constitute a failure on the part of the State of Georgia to comply in every respect with the reconstruction acts, yet Congress ought to waive these slight departures and admit their representatives. But an examination into the subsequent proceedings of the legislature of Georgia, and the disorganized condition of society in that State, leads your committee to the conclusion that all these violations of law were in pursuance of a common purpose to evade the law and resist the authority of the United States.

The colored members in the organization of the legislature, as has been stated, were allowed to take their seats. On the 9th of July, 1868, the day after such organization, the following action was had in regard to the three colored senators:

"Mr. Welch moved that the action taken on yesterday, in regard to the eligibility of certain members, be reconsidered. Agreed to.

"Mr. Sherman moved to strike out that portion of Mr. Candler's resolution which refers to the eligibility of Messrs. Campbell, Wallace, and Bradley.

"Mr. Candler moved to lay the resolution and amendment on the table.

"Mr. Bradley, being entitled to the floor, resumed his speech of yesterday, in opposition to the amendment of Mr. Candler, and was followed by Mr. Campbell.

"The matter was finally referred to the committee on privileges and elections."

Thus this vexed question was quietly smothered for the time. But Mr. Candler, on the 25th of July (a few days before the Senatorial election), offered the following resolution, which was laid on the table:

"Whereas ex-Governor Joseph E. Brown, one of the ablest lawyers in the Republican party of Georgia, as well as other persons, distinguished for their knowledge of constitutional law, held, during the late canvass, that persons of color were not entitled to hold office under the existing constitution; and

"Whereas such persons hold seats as senators on this floor; and

"Whereas there are laws of vital importance to the people of Georgia to be enacted by the general assembly, the validity of which should not be made uncertain because of a participation of their enactment by persons not entitled, under the constitution, to so participate: Therefore,

"*Be it resolved*, That the committee on privileges and elections be directed to inquire into the eligibility of the several persons of color holding seats as senators and report at the earliest day practicable."

Mr. Hungerford moved to lay the resolution on the table.

The motion prevailed.

The question remained unsettled until after the Senatorial election and the adjournment of Congress. But on the 3d of September, 1868, the house of representatives of Georgia expelled twenty-four of its members on account of color, and subsequently expelled two more for the same reason, and on the 11th day of same month the senate expelled two of its members for a like reason, making twenty-eight members of the legislature that were expelled by the two houses without authority of law. For a full account of these proceedings see Exhibit D.

After the expulsion of the colored members the persons who received the next highest number of votes for their places, under what is known in Georgia as the Irwin code, were permitted to take their seats. But no investigation as to their eligibility under the fourteenth amendment appears to have been had. (See Exhibit D.)

Your committee are of opinion that under the constitution of Georgia there is no distinction in the right to hold office on account of race or color, and they are quite confident that such was the opinion of Congress at the time it approved that constitution.

This act of injustice and oppression denied the right of representation of a whole race, constituting nearly one-half of the people of Georgia. It will not be contended that there is no power in this Government to restrain in some form an outrage of this character. It certainly furnishes a strong reason why Congress should not at this time overlook the irregularities in the organization of the legislature of Georgia, and admit her Senators to representation. And this is not all. Your committee have examined the official reports of the various officers connected with the Freedmen's Bureau in Georgia, and find reported 336 cases of murders and assaults with intent to murder upon colored persons by the whites, from January 1, 1868, to November 15 of same year. For all of which there has been no legal redress and scarcely any effort whatever on the part of the authorities to punish the criminals. And it is stated by these officers that they are unable to report fully as to the number and character of these outrages on account of intimidation of witnesses, which is practiced by the perpetrators of crime. Your committee have no source of official information as to outrages committed upon loyal whites, but it is

represented by various and numerously signed petitions and memorials from the loyal people of Georgia that they are constantly exposed to violence, and are without protection of law. It is a matter of public notoriety that loyal white men are persecuted, murdered, and driven from their homes. Several members of the legislature have been compelled to take refuge at the capital of the State where the national troops are stationed to avoid the violence of the enemies of the United States. The unlawful and vindictive conduct of the legislature tend to confirm these statements and reports, and exclude all hope that the new civil government will afford adequate protection to life and property. Since the withdrawal of the military crime has greatly increased, while punishment for crime has diminished. Wherefore your committee feel called upon to recommend that Mr. Hill be not allowed to take a seat in the Senate for the reason that Georgia is not entitled to representation in Congress, and submit the accompanying resolution.

Resolved, That Joshua Hill, claiming to be Senator-elect from Georgia, ought not now to be permitted to take a seat in this body.

I concur in the conclusion of the report that Mr. Hill ought not to be admitted, and agree that the report be made.

ROSCOE CONKLING.

I concur in the conclusion of the report that Mr. Hill ought not now to be admitted, and agree that the report be made.

FRED'K T. FRELINGHUYSEN.

VIEWS OF THE MINORITY.

Mr. Trumbull asked and obtained leave to submit the following as the views of the minority; which were ordered to be printed with the report of the Committee on the Judiciary on the credentials of Joshua Hill, Senator-elect from Georgia:

The undersigned, being unable to agree with the majority of the committee in their report upon the credentials of Joshua Hill, claiming to have been duly elected and entitled to a seat in the Senate from the State of Georgia, begs leave to present the reasons for his dissent. That Hill possesses all the qualifications for a member of the Senate of the United States required by the Constitution; that he is one of the few prominent men residing in a rebel State who remained true to the Union during the war; that he is now and has been at all times thoroughly loyal to the Union; that he is in every respect personally unobjectionable; that he was duly elected by the legislature of Georgia, and that his credentials are in due form is not questioned by any one. If he is not entitled to his seat, it must be either because the State of Georgia was not in a condition to entitle her to representation at the time of his election, or because the body which elected him was not the legislature of that State.

The former of these propositions, whether Georgia was or is in a condition to entitle her to representation, is not a question for the Senate to decide. The unfortunate disagreement which has existed for some years between the President and Congress has, in part, been owing to a disagreement upon this very point; the President insisting that it was for each House of Congress to determine for itself in the admission of members whether a State was entitled to representation, and Congress insisting that it was for Congress to determine in the first instance whether a State was entitled to representation, and that question being affirmatively settled, it was then for each House to judge for itself of the election, returns, and qualifications of its own members. This controverted point was settled by Congress in March, 1866, by the passage through both Houses of the following concurrent resolution:

"*Resolved by the House of Representatives* (*the Senate concurring*), That, in order to close agitation upon a question which seems likely to disturb the action of the Government, as well as to quiet the uncertainty which is agitating the minds of the people of the eleven States which have been declared to be in insurrection, no Senator or Representative shall be admitted into either branch of Congress from any of said States until Congress shall have declared such State entitled to such representation."

The reconstruction acts, since indorsed by the people at a popular election, declare that "until the people of said rebel States shall be by *law*—not by the action of each House—admitted to representation in the Congress of the United States, any civil governments which may exist therein shall be deemed provisional only;" which is equivalent to a declaration that when admitted to representation *by law* they shall be no longer provisional.

The supplementary act of March 23, 1867, declares that when the requirements of the reconstruction acts shall have been complied with by any of the rebel States in the formation of a constitution, and "said constitution shall be approved by Congress, the State shall be declared entitled to representation, and Senators and Representatives

shall be admitted therefrom, as therein provided." This action of Congress, indorsed by the people, determined that neither House of Congress was authorized by itself to admit Senators or Representatives from any of the rebel States till Congress should determine by law that such State was entitled to representation. The converse of the proposition was also equally determined, that it would be the duty of each House to admit duly elected and qualified Senators and Representatives from each of said States whenever Congress shall have determined by law that such State was entitled to representation.

On the 25th of June, 1868, Congress passed the following act:

"AN ACT to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama and Florida to representation in Congress.

"Whereas the people of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida have, in pursuance of the provisions of an act entitled 'An act for the more efficient government of the rebel States,' passed March 2, 1867, and the acts supplementary thereto, framed constitutions of State government which are republican, and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same: Therefore,

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That each of the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida shall be entitled and admitted to representation in Congress as a State of the Union when the legislature of such State shall have duly ratified the amendment to the Constitution of the United States proposed by the Thirty-ninth Congress, and known as article 14, upon the following fundamental conditions: That the constitutions of neither of said States shall ever be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote in said State, who are entitled to vote by the constitution thereof herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution may be made with regard to the time and place of residence of voters; and the State of Georgia shall only be entitled and admitted to representation upon this further fundamental condition: that the first and third subdivisions of section 17 of the fifth article of the constitution of said State, except the proviso to the first subdivision, shall be null and void, and that the general assembly of said State by solemn public act shall declare the assent of the State to the foregoing fundamental condition.

"SEC. 2. *And be it further enacted*, That if the day fixed for the first meeting of the legislature of either of said States by the constitution or ordinance thereof shall have passed or have so nearly arrived before the passage of this act that there shall not be time for the legislature to assemble at the period fixed, such legislature shall convene at the end of twenty days from the time this act takes effect, unless the governor-elect shall sooner convene the same.

"SEC. 3. *And be it further enacted*, That the first section of this act shall take effect as to each State, except Georgia, when such State shall, by its legislature, duly ratify article 14 of the amendments to the Constitution of the United States, proposed by the Thirty-ninth Congress, and as to the State of Georgia when it shall in addition give the assent of said State to the fundamental condition hereinbefore imposed upon the same; and thereupon the officers of each State duly elected and qualified under the constitution thereof shall be inaugurated without delay; but no person prohibited from holding office under the United States, or under any State, by section 3 of the proposed amendment to the Constitution of the United States, known as article 14, shall be deemed eligible to any office in either of said States, unless relieved from disability as provided in said amendment; and it is hereby made the duty of the President within ten days after receiving official information of the ratification of said amendment by the legislature of either of said States to issue a proclamation announcing that fact."

On the very day of the passage of the foregoing act Rufus B. Bullock, governor-elect of Georgia, issued his proclamation convening the legislature of that State on the 4th of July following. The manner in which the legislature was organized will fully appear from the following extract, taken from the official report of Major-General Meade:

"The convention in Georgia, after being in session several months, finally, in March, adopted a constitution, which together with a State ticket was submitted to the people in April, and ratified by a very handsome majority of the registered vote—all parties taking part in the election. This constitution, with some modifications, was adopted by Congress, and the legislature, which convened in July, making these modifications and otherwise complying with the requirements of the reconstruction laws, the State, together with Alabama and Florida, were, by act of Congress, formally admitted to representation.

"There is one point in regard to the admission of the State of Georgia to which I feel called upon to make special allusion. When the legislature was convened by the pro-

visional governor and governor-elect, the question arose whether, as military commander, I was called on to inquire into the eligibility of the members, either under the United States laws or the constitution of Georgia. The convention of Georgia had, in its ordinance calling an election, directed that all returns should be sent to the military commander of the district, who was requested to issue the necessary certificates of election. In carrying out this request of the convention I deemed my duty simply required that I should give the member having the greatest number of votes the ordinary certificate of election, and that it would be for each house to decide on the eligibility of those members whose seats were on any grounds contested. Whilst I admitted, as district commander, executing the law, I was to see that no one ineligible to office under the fourteenth article constitutional amendment should be allowed to take office, I did not see that in the case of a parliamentary body I was called on to decide on the qualifications of the members. In this view I was sustained by a telegram sent to me for my information from the War Department, which had been sent to the governor of Louisiana and the military commander of the fifth district, and which I quote:

"'WASHINGTON, *June* 30, 1868.

"'To Governor WARMOUTH, *New Orleans*:

"'We think the persons disqualified under the fourteenth article of the amendment to the Constitution of the United States are not eligible to your legislature. This is to be determined by the respective houses; but no oath can be imposed except the oath prescribed by the State constitution.

"'JAMES WILSON,
"'*Chairman Judiciary Committee.*
"'GEORGE F. BOUTWELL,
"'J. F. FARNSWORTH,
"'H. E. PAINE,
"'*Reconstruction Committee.*'

"It will be seen by the above telegram that the distinguished gentlemen whose names were attached were of the opinion, first, that no one ineligible to office under the fourteenth article could take a seat in the legislature; second, that the respective houses were to judge of the question; third, that no oath testing this eligibility could or should be prescribed in advance of the meeting of the legislature. These views being in accordance with my own, I acted on them, and was present at the organization of the two houses of the Georgia legislature; to the members declared in my order as having the highest number of votes, there being administered only the oath prescribed by the State constitution. After these houses were organized, the provisional governor informed me officially of their organization, but that, as far as he could learn, no steps had been taken to test the question of the eligibility of members under the fourteenth article. I replied to the governor that until the State was admitted to representation the legislature and all the officers were only provisional, and subject to the paramount authority of the district commander, and that in the exercise of this power I should consider all acts of the legislature null and void until satisfactory evidence was presented to me that each house had purged itself of ineligible members under the fourteenth article, provided there were any such in either house; and I desired the provisional governor to communicate these views to each house. On the receipt of this letter, each house at once ordered an investigating committee and inquired into the qualification of each member, and duly reported this fact through the provisional governor, stating at the same time that neither house had found any member ineligible.

"The provisional governor, in transmitting these communications, expressed the opinion, founded on evidence presented to him, that several members in both houses were ineligible, and called on me to exercise my power and require said members to vacate their seats. On reflecting upon this subject, I could not see how I was to take the individual judgment of the provisional governor in the face of a solemn act of a parliamentary body, especially as, from the testimony presented, I did not, in several cases, agree with the judgment of the provisional governor. The question was simply whether, in the construction of a law, and in considering the facts of individual cases, I should make myself the judge, or take the opinion of the provisional governor, in the face of the official information that a parliamentary body had gravely and formally, through a committee, examined, reported, and acted on these cases. My judgment was decidedly that I had fulfilled my duty in compelling the houses to take the action they had, and that having thus acted, I had neither the authority, nor was it politic or expedient, to overrule their action, and set up my individual judgment in opposition. By an inspection of the telegram sent July 18, and the reply of the General-in-chief, July 23, it will be seen that my views and actions were approved. I allude thus *in extenso* to this subject, because his excellency the governor of Georgia, in a public speech recently delivered at

Albion, N. Y., is pleased to attribute the failure of Georgia to be properly reconstructed to my action in failing to purge the legislature of his political opponents, he having advised me, when he urged such action, that his friends had been relieved of their disability by Congress.

"The States being admitted to representation, the civil power vested in the military commander by the reconstruction acts ceased, and civil authority resumed its sway."

The foregoing extract, together with copies of official correspondence between Major-General Meade and General Grant, hereto attached, establish the fact that the legislature of Georgia fully complied with the requisitions of the act of June 25, 1868; and the fact of her ratification of the fourteenth amendment was duly proclaimed by the President, as also appears by a copy of the proclamation hereto attached.

Congress having decided that Georgia was entitled to representation through the State government organized under the reconstruction acts, on complying with the conditions therein named, it is not competent for either house, now that the conditions have been complied with, to refuse admission to members on the ground that the State is not entitled to representation. For either House to do so would be for such House to set aside a solemn act of Congress, passed by both Houses, and to repudiate the principle on which it differed with the President and went before the people in the popular elections. The House of Representatives, conforming to the law of Congress, has admitted to seats the Representatives from Georgia against whom no personal objection was made, without any further inquiry than whether Georgia had complied with the conditions of the act of June 25, 1868. No attempt was made in that body to revise the decision of Congress.

The assumption that the constitutional amendment was not adopted in good faith is not sustained by a particle of evidence before the committee, and is contradicted by the official report of Governor Bullock to General Meade, by the orders of General Meade, and those emanating from the General-in-chief, by the proclamation of the President, made in pursuance of law, by the action of the House of Representatives in passing upon the admission of members to that body, and by the acquiescence of all the departments of Government from July until now. If one branch of Congress is at liberty to deny a State representation on the ground that it did not act in good faith in agreeing to the conditions prescribed by Congress, what is to prevent either House of any other Congress, acting on a like assumption, from denying admission to members from any other of the reconstructed States? It is well known that a large political party in the country believe the reconstruction acts unconstitutional. Should that party hereafter obtain ascendency in either House of Congress, is it to be at liberty to overturn the State governments which have been established in pursuance of law and to quote as a precedent the action of the Senate in this case? When are we to have peace and civil governments established in the late rebel States under such a policy? The question has been asked if one person disqualified by the fourteenth amendment could be permitted to act as a member of the Georgia legislature, why not all; and if all, would it be pretended that it was a legislature organized in accordance with the reconstruction acts? Probably not; and the same question, with the same force, may be asked in reference to Congress or any other legislative body in the land. If a disqualified person or several such were permitted to act as members of Congress or a State legislature, does anybody pretend that the action of the body would be vitiated thereby, and yet who would not admit that if a body of men were to assemble and undertake to act as the Congress or the legislature of a State, all of whom were disqualified from acting as such, that their action would have any validity? No such case is to be presumed, and no legislative body is justified or safe in basing its action on supposititious cases which never have and are not likely ever to occur. No such state of facts is presented in the case of Georgia. Not one in ten of the members of the senate, after deducting those from whom the disabilities had been removed by Congress, and not one in fifty of the members of the house were found disqualified by even the minority of the committee who investigated this subject, and each house decided all its members to be qualified. The constitution of Georgia, which was accepted by Congress, like that in all the other States, and like the Constitution of the United States, in regard to Congress, leaves to each house the exclusive right to judge for itself of the election and returns of its own members, and that judgment, when pronounced, is conclusive everywhere. There was not a shadow of anything deserving the name of evidence before the committee to show that either house of the legislature of Georgia acted corruptly or fraudulently in passing upon the right of members to their seats under the fourteenth amendment.

The Senate has no right, in the opinion of the undersigned, to revise the action of Congress, disregard its laws, and refuse Hill his seat, because in its opinion Georgia is not entitled to representation, when Congress has decided otherwise, and the Executive and the General-in-chief have acted on that decision. It being admitted that Hill is entitled to his seat if Georgia is entitled to be represented in the Senate, and it being shown that Georgia has been declared by law to be entitled to representation on certain conditions,

which are shown to have been complied with, the conclusion would seem to be irresistible that Hill was entitled to take his seat. That it is competent for the Senate. in passing upon the elections, returns, and qualifications of its members, to inquire whether the body by which a Senator was elected was the legislature of the State is not disputed; but it is not pretended that Georgia had any other legislative assembly than the one which elected Mr. Hill claiming to be a legislature. The legislative body which elected him was the one which was convened by the governor in pursuance of an act of Congress; the one which ratified the fourteenth amendment to the Constitution as proclaimed both by the President and Secretary of State, in accordance with the requirements of law; and the one, and the only one, which has been elected and assembled in said State under the constitution formed in pursuance of the reconstruction acts and approved by Congress. The legislature of Georgia, under its constitution, consists of forty-four senators and one hundred and seventy-five representatives, and the complaint is, not that the persons properly chosen and qualified would not and did not constitute the legislature, but that "there were a number of persons holding seats in both branches of the legislature that were and are not eligible under the fourteenth constitutional amendment."

Each house appointed committees, who investigated the question of the eligibility of the members of their respective houses under that amendment; and, on their report, each house decided that all its sitting members were entitled to seats. Whether these decisions were correct or not is not material to Hill's right to a seat, as it is not pretended, even by the minority of the committees appointed to investigate, that more than four senators out of forty-four, omitting those whose disabilities had been removed by act of Congress, and three representatives, out of one hundred and seventy-five, were disqualified by the fourteenth amendment.

No evidence was taken by the Judiciary Committee to ascertain how many or whether any of the members of either house were ineligible.

The statements of letter-writers and memorialists cannot surely be treated as evidence upon which to overthrow a State government. The only reliable information the committee had on that subject is contained in the official report of Major-General Meade, and the journal of the legislature, as published in a newspaper. From these it appears that only four senators and three representatives were complained against by any one in the legislature as disqualified by the fourteenth amendment.

If it were admitted that the decision of each house was wrong in regard to the eligibility of the members complained against it would not vitiate the proceedings of the legislature. Scarcely a legislature assembles in any of the States in which there are not controversies in regard to seats, and it often happens that these are not settled till near the close of the session, when, perhaps, sitting members are turned out; and yet, who ever supposed that the proceedings of a legislative body were vitiated because they were participated in by persons whom it afterwards turned out were not entitled to seats? But whether each house of the legislature of Georgia decided rightly or not as to the eligibility of its members is not a question for the Senate to review. The Senate has no jurisdiction to inquire whether the members of a State legislature are properly elected and qualified.

If it could make this inquiry in regard to the members of the legislature of Georgia, which had been declared entitled to representation, it could make it in regard to the legislature of Illinois, or any other State. No one, I apprehend, would contend for such a power in Congress. It does not follow that Congress may not provide the means for executing the fourteenth amendment. There can be no question of its power to pass a law making it a penal offense for any person to take or hold office contrary to the provisions of that amendment. Another objection made to the organization of the Georgia legislature is that its members did not take the test oath required by the ninth section of the act of July 19, 1867, to be administered to all persons appointed to office under any of the so-called State governments in the rebel States; but obviously that requirement did not apply to members of a legislature elected under a constitution formed in pursuance of the reconstruction acts, and so General Grant, Major-General Meade, and the Judiciary Committee of the House decided. Another objection urged against Mr. Hill's right to a seat is the fact that the legislature of Georgia unjustly denied the right of certain colored members to seats. However unjust this denial may have been, it did not take place till more than a month after Hill's election. He was elected July 28, and the colored members participated in all legislation till September 3.

It is difficult to perceive how an act subsequent to the election could affect its validity. If the legislature was properly organized when it elected Hill, the fact that it subsequently became disorganized ought not to affect his election.

There is great diversity of opinion as to the condition of affairs in Georgia at this time. The committee have taken no testimony on that subject, but it is understood that a committee of the House of Representatives have taken a large mass of evidence as to the present state of affairs in Georgia, which will soon be printed.

Time and the salutary influence of the incoming administration, it is be soon correct whatever of lawlessness and disorder now remain in the State. I they should not, some way will doubtless be found by which Congress and the acting in harmony, and not the Senate alone, will be able to preserve the pe tect all the citizens of Georgia in the enjoyment of all their rights. These tions, however, should not affect the right of Mr. Hill to his seat in the Sena only alluded to because of the importance attached to the present condition c Georgia by the majority of the committee. The undersigned, believing h have been duly elected Senator by the legislature of a State entitled to rep and that he possesses all the qualifications required by the Constitution, n striking out of the resolution reported by the committee all after the word " and the insertion of the following:

"That Joshua Hill is entitled to take his seat in the Senate on taking th scribed by the Constitution and laws."

LYMAN TRU

CREDENTIALS OF MR. MILLER.

MONDAY, *January*

Mr. Trumbull presented the credentials of H. V. M. Miller, elected a Sen legislature of the State of Georgia, for the unexpired portion of the term com the 4th day of March, 1865; which were read.

Ordered, That they be referred to the Committee on the Judiciary.

THURSDAY, *February*

The President *pro tempore* presented resolutions adopted by the National publican Association of Georgia, approving the platform and action of the party and the policy of Governor Bullock; condemning the expulsion of colore from the legislature of Georgia, and praying that Joshua Hill and H. V. M. not be admitted to the Senate as Senators from Georgia; which were referred mittee on the Judiciary.

WEDNESDAY, *February*

Mr. Stewart, from the Committee on the Judiciary, to whom were refer dentials of Hon. H. V. M. Miller, elected a Senator by the legislature of (ported against admitting him to a seat in the Senate.

[First session of the Forty-first Congress.]

CREDENTIALS OF MESSRS. HILL AND MILLER.

TUESDAY, *March*

On motion by Mr. Trumbull,

Ordered, That the credentials of Joshua Hill and H. V. M. Miller, Senator the State of Georgia, on the files of the Senate, with the accompanying pa ferred to the Committee on the Judiciary.

WEDNESDAY, *May*

Mr. Trumbull, from the Committee on the Judiciary, to whom were refer dentials of Joshua Hill and H. V. M. Miller, elected Senators by the legisla State of Georgia, reported them back to the Senate and moved that they lie o which motion was agreed to.

[Mr. Trumbull stated (Congressional Globe, 1st sess. 41st Cong., page 10 committee were of opinion that the credentials should lie upon the table u had been taken upon the bill in regard to the State of Georgia; that he was that recommendation and believed it the duty of the Senate to act upon the at once.]

CREDENTIALS OF MESSRS. HILL AND MILLER, AND WHITELEY AND F

[Second session of the Forty-first Congress.]

MONDAY, *February*

On motion by Mr. Trumbull,

Ordered, That the credentials of H. V. M. Miller and Joshua Hill, as Sen the State of Georgia, on the files of the Senate, be referred to the Committee diciary.

FRIDAY, *July* 15, 1870.

Mr. Stewart presented the credentials of Richard H. Whiteley, elected a Senator by the legislature of the State of Georgia for the unexpired portion of the term ending March 3, 1871; which were read.

Ordered, That they lie on the table.

Mr. Stewart presented the credentials of Henry P. Farrow, elected a Senator by the legislature of the State of Georgia for the unexpired portion of the term ending March 3, 1873; which were read.

Ordered, That they lie on the table.

[Third session of the Forty-first Congress.]

TUESDAY, *December* 13, 1870.

On motion by Mr. Stewart,

Ordered, That the credentials of Richard H. Whiteley and Henry P. Farrow, Senators-elect from the State of Georgia, presented at the last session, be referred to the Committee on the Judiciary.

MONDAY, *January* 23, 1871.

Mr. Trumbull, from the Committee on the Judiciary, to whom were referred the credentials of Joshua Hill, H. V. M. Miller, Henry P. Farrow, and Richard H. Whiteley, claiming to be Senators-elect from the State of Georgia, submitted a report (No. 308), accompanied by the following resolution:

"*Resolved*, That Joshua Hill has been duly elected Senator of the United States by the legislature of the State of Georgia, and is entitled to take his seat on taking the oaths required by the Constitution and laws."

Mr. Stewart asked, and obtained, leave of the Senate to submit the views of a minority of the Committee on the Judiciary in reference to the election of Senators from the State of Georgia.

Ordered, That they be printed to accompany the report of the Committee of the Judiciary thereon.

REPORT OF COMMITTEE—MAJORITY AND MINORITY.*

[The committee consisted of Messrs. Trumbull (chairman), Stewart, Edmunds, Conkling, Rice, Carpenter, and Thurman.]

IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1871.—Ordered to be printed.

Mr. Trumbull, from the Committee on the Judiciary, submitted the following report:

The Committee on the Judiciary, to whom were referred the credentials of Joshua Hill, H. V. M. Miller, Henry P. Farrow, and Richard H. Whiteley, claiming to have been elected Senators from the State of Georgia, submit the following report:

The credentials of all four of the claimants are sufficiently formal to entitle them to seats if they were otherwise entitled, but it is manifest that only two can be admitted under any circumstances. The Constitution declares that "the Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof."

The history of the reconstruction of the State of Georgia is succinctly set forth in a report made to the Senate by the Judiciary Committee on the 2d of March last, from which the following are extracts:

"The acts of Congress of March 2, 1867, and March 23, 1867, called the reconstruction acts, made all existing government in that State provisional, and subject to the paramount authority of Congress. That paramount authority, by the same act, confided to the military arm of the executive department certain specified powers and duties for the preservation of peace and order in the State, until the people of this State should frame a new government and elect public officers under it, and be admitted again into full relation with the Union.

"Under these acts, and particularly that of June 25, 1868, a form of government was adopted by the people of Georgia, and they elected under it a legislature and governor. And in July, 1868, after sundry difficulties touching the eligibility of certain members of the legislature had been disposed of by the legislature, with the approval of the general in command of the district, the new government was by him declared duly

* Taken from Senate Reports, 3d sess. 41st Cong., No. 308. The accompanying documents, making pages 8-16, 21-36, and 43-65, are omitted.

organized, and the governor was inaugurated, and the conduct of affairs was there by the military commander turned over to the civil officers, and the military auth ceased.

"The culmination of this action is found in the following orders of General Me commanding the district:

"'[General Orders No. 101.]

"'HEADQUARTERS THIRD MILITARY DISTRICT,
"'DEPARTMENT OF GEORGIA, FLORIDA, AND ALABAMA,
"'*Atlanta, Ga., July* 14, 186

"'Whereas official information has been received at these headquarters from the ernor-elect of the State of Alabama that the legislature of said State, elected under provisions of General Orders No. 101, series of 1867, from these headquarters, assembled and complied with the requisitions of the act of Congress, which becan law June 25, 1868, entitled "An act to admit the States of North Carolina, S Carolina, Louisiana, Georgia, Alabama, and Florida to representation in Congress;" whereas said act states that on compliance with the conditions therein set forth by State the officers of said State, duly elected and qualified under the constitution the shall be inaugurated without delay: It is therefore ordered—

"'I. That all civil officers holding office in this State, whether by military app ment or by failure to have successors qualified, shall promptly yield their offices turn over to their properly elected and qualified successors all public property, archi books, records, &c., belonging to the same.

"'II. Whenever the military commander of the subdistrict of Alabama is offic notified of the inauguration of the State government-elect, military authority, u the acts of Congress known as the reconstruction laws, will be at an end in said S and it is made the duty of the subdistrict commander to transfer everything ap taining to the government of said State to the proper civil officers, and to abstai future, upon any pretext whatever, from any interference with, or control over, civil authorities of the State, or the persons and property of the citizens thereof.

"'III. On the inauguration of the civil government all prisoners held in custod by bonds for offenses against the civil law will be turned over to the proper authority. In the mean time writs of habeas corpus from the United States courts be respectfully obeyed, and the decisions conformed to. Writs from State courts have respectful returns made, stating prisoners are held by authority of the Un States, and can only be released by writs issued by United States courts.

"'By order of Major-General Meade.

"'R. C. DRUM,
"'*Assistant Adjutant-Genera*

(Similar orders were given with reference to the States of Georgia and Florida.)

"'HEADQUARTERS THIRD MILITARY DISTRICT,
"'*Atlanta, Ga., July* 20, 186

"'GOVERNOR: I have the honor to acknowledge the receipt of your letter of the instant, advising me that a committee of the house of representatives had waite you and verbally informed you "that the house, having made a careful investig into the eligibility of its members, have decided, by a vote of the house, that all per now in their seats are eligible."

"'I have already acknowledged the receipt of your letter of the 17th, reporting action of the senate on the same subject.

"'I have now to advise and instruct you that each house having complied with requisitions of my communication of the 18th instant, by examining into and deci on the eligibility of their members, under the acts of Congress and the fourte article constitutional amendment, I have no further opposition to make to their ceeding to the business for which they were called together, as I consider them le organized from the 18th instant, the date of the action of the house.

"'Very respectfully, your obedient servant,

"'GEORGE G. MEADE,
"'*Major-General, U. S.*

"'Hon. R. BULLOCK, *Provisional Governor of Georgia.*

"'A true copy:

"'R. C. DRUM,
"'*Assistant Adjutant-Genera*

"'HEADQUARTERS THIRD MILITARY DISTRICT,
"'*Atlanta, Ga., July* 21, 1868.

"'Civil government being established in Florida and Alabama, and the Georgia legislature having to-day passed the fourteenth article constitutional amendment, indicating that in a few days this State will have civil government re-established, I am prepared to dispense with one of the regiments of infantry in this district, and would recommend the withdrawal of the Fifteenth regiment, now in Alabama. Please notify me at the earliest moment, that I may make the proper arrangements for relieving it.

"'GEORGE G. MEADE,
"'*Major-General, U. S. A.*

"'Brevet Major-General SCHRIVER,
"'*War Department, Washington, D. C.*

"'A true copy:

"'R. C. DRUM,
"'*Assistant Adjutant-General.*'

"'HEADQUARTERS THIRD MILITARY DISTRICT,
"'*Atlanta, Ga., July* 21, 1868.

"'Both houses of the legislature of Georgia having examined into and decided upon the qualifications of their respective members, under fourteenth article constitutional amendment, I yesterday instructed the provisional governor to communicate to each house that I considered their organization legal, and withdrew any opposition to their proceeding to the business which had called them together. To-day both houses, by decided majorities, have passed the constitutional amendment known as article 14, and will, without doubt, at once otherwise comply with the requisition of the act of June 25, 1868.

"'GEORGE G. MEADE,
"'*Major-General.*

"'General U. S. GRANT, *Washington, D. C.*'

"'HEADQUARTERS THIRD MILITARY DISTRICT,
"'*Atlanta, Ga., July* 22, 1868.

"'Yesterday the governor-elect of Georgia notified me officially that both houses of the general assembly of Georgia had by solemn act complied with the requisitions of the act of Congress which became a law June 25, 1868; and to-day I have witnessed the inauguration of the governor-elect. The State of Georgia is therefore, under the act of Congress, entitled to representation. The official document will be carried to-day by Brt. Brig. Gen. R. C. Drum, sent to Washington for this purpose.

"'GEORGE G. MEADE,
"'*Major-General, U. S. A.*

"'A true copy:

"'R. C. DRUM,
"'*Assistant Adjutant-General.*

"'General U. S. GRANT, *Washington, D. C.*'

"The State being then in fact relieved from military government, proceeded, in the manner provided by its constitution, to appoint judges and other officers of justice, and to fill up completely its organization of State government.

"The legislature, in the forms prescribed by the laws of the United States, proceeded to elect Senators to represent the State in Congress, and it also passed many laws.

"During all this time, however, certain persons—variously claimed to number from ten to twenty-five, but not so numerous as to affect the organization of the legislature in respect to a constitutional quorum of legal members—held seats in the legislature under the forms of election, but who were or are understood to have been disqualified therefor by force of the fourteenth amendment of the Constitution of the United States.

"After these events, and in September, 1868, a majority of the senate and house of representatives, respectively, including the persons so claimed to have been disqualified, proceeded to decide that persons of African descent (of whom there were several in each house) could not, for that cause, hold seats in the legislature, and to exclude them therefrom in a body, without giving them any voice in deciding the question; and thereupon they filled up the seats so made vacant by the admission of the white per-

sons having the next largest number of votes at the election for members of t
ture.

"These events last named, and the circumstances existing in connection v
led to the passage of the act of December 22, 1869.

"The first section of that act made it the duty of 'the governor of tl
Georgia to summon all persons elected to the general assembly of said State,
by the proclamation of George G. Meade, general,' &c., dated June 25, 1868
at the capitol on a day named.

"And it further directed that 'thereupon the said general assembly of said
proceed to perfect its organization in conformity with the Constitution and l
United States, according to the provisions of this act.'

"The persons named in this act, and in the proclamation, were those only v
ceived a majority of the votes at the election; and they were, in the aggregate
body of men who had composed the legislature at its organization, and thenc
til the exclusion of the negro members and the introduction of minority canc
their places.

"The law, thus ascertaining the persons who were to assemble, then procee
that 'the said general assembly shall proceed to perfect its organization,' &c.
ity is conferred upon the governor to do it, nor upon the military commander.
and duty to perfect its organization is conferred on the assembly exclusively l
words of the act. There is no room for inference or construction.

"The next three sections provide the method by which the houses are
their organization, *i. e.*, by taking certain oaths and by the election of o
they also provide that the neglect to take such oaths shall disqualify the
neglecting and make them ineligible to seats, and that false swearing in t
oaths shall be perjury, and be punished as such.

"The next section (5th) provides severe penalties for any interference with
of such oaths and participation in the proceedings.

"The seventh section requires the President to employ the military fo
United States so far 'as may be necessary to enforce and execute the proced
ions of this act.'

"Under this act the governor of Georgia did summon the persons elected t
lature, as named in the proclamation of General Meade, to assemble at the S
in Atlanta on the 10th day of January, 1870.

"In pursuance of this proclamation the geater part, and nearly all t
named, assembled at the time and place named.

"A quorum of the Senate took the oaths prescribed, and organized as provi
the act.

"The members of the house of representatives were called to order by o
not a member or officer, but who had been designated for that purpose by th
Some of the members protested against this and attempted to elect a speaker p
but were prevented by said Harris and his assistants; and thenceforth, unti
organization of the house, Harris continued to preside and to adjourn the body
to time, according to his own pleasure, without consulting the house, and to
what persons who had appeared as members should be permitted, from day
take the prescribed oaths, and take their seats.

"This proceeding was in substance ratified by the general in command
who had been, after the passage of the act of December 22, 1869, appointed t
mand of Georgia, as a military district under the act of March 2, 1867.

"It having been suggested to the general in command that sundry persons
or were about to take the oaths prescribed in the act of December 22, 1869,
directed that those accused of such improper conduct or purpose should, for the t
be excluded from participation in the proceedings, and thereupon organized
military officers for the purposes set forth in the following general orders:

"'[General Orders No. 3.]

"'HEADQUARTERS MILITARY DISTRICT OF GEOR
"'*Atlanta, Ga., January* 1

"'In pursuance of instructions received from the headquarters of the Arm
is hereby appointed to inquire into the eligibility of W. T. Winn, of Cobb Cou
J. Collier, of Dooly County; A. W. Holcomb, of Milton County; W. J. An
Houston County; B. B. Hinton, of Marion County; and C. J. Welborn, of Unic
to seats in the legislature of Georgia, under the reconstruction acts.

"'The board will meet and organize at once, and will have power to admin
and send for persons and papers. They will permit the persons whose eligil
question to appear before them either in person or by attorney, and will also

appearance before them of persons who deny the eligibility of said W. T. Winn, J. J. Collier, A. W. Holcomb, W. J. Anderson, B. B. Hinton, and C. J. Welborn.

"'The board will keep a complete and accurate record of the proceedings and of all testimony which may be given before them, and will transmit the same to these headquarters with its report.

"'*Detail for the board.*—Bvt. Maj. Gen. T. H. Ruger, United States Army; Bvt. Brig. Gen. T. J. Haines, United States Army; Maj. Henry Goodfellow, judge-advocate, United States Army.

"'By order of Brevet Major-General Terry:

"'J. H. TAYLOR.
"'*Assistant Adjutant-General.*

"'Official:

"'R. P. HUGHES,
"'*Acting Assistant Adjutant-General.*'

"'[General Orders No. 4.]

"'HEADQUARTERS MILITARY DISTRICT OF GEORGIA,
"'*Atlanta, Ga., January* 15, 1870.

"'The board of officers convened by General Orders No. 3, current series, from these headquarters, is hereby directed, in addition to the duty assigned to them by that order, to inquire into the eligibility under the reconstruction acts of the following-named members-elect of the house of representatives, viz:

"'Isham Raddish, of Appling County; R. W. Phillips, of Echols County; E. M. Taliaferro, of Fulton County; J. H. Nunn, of Glascock County; R. A. Donaldson, of Gordon County; W. P. Price, of Lumpkin County; J. N. Harris, of Murray County; L. H. Walthall, of Polk County; L. C. A. Warren, of Quitman County; Thomas F. Rainey, of Schley County; C. C. Humber, of Stewart County; G. N. Harper, of Sumter; Frank Wilchar, of Taylor County; John B. Sorrells, of Walton County; J. D. Smith, of Ware County.

"By order of Brevet Major-General Terry:

"'J. H. TAYLOR,
"'*Assistant Adjutant-General.*'

"The board proceeded to discharge its duties, and on the 25th day of January, 1870 the result of its action was promulgated as follows:

"'[General Orders No. 9.]

"'HEADQUARTERS MILITARY DISTRICT OF GEORGIA,
"*Atlanta, Ga., January* 25, 1870.

"'Whereas the board convened by General Orders No. 3, current series, from these headquarters, consisting of Bvt. Maj. Gen. T. H. Ruger, colonel Eighteenth United States Infantry; Bvt. Brig. Gen. T. J. Haines, commissary of subsistence; and Maj. Henry Goodfellow, judge advocate, United States Army, has made its report in writing, by which it appears that R. A. Donaldson, of Gordon County; E. M. Taliaferro, of Fulton County, and J. H. Nunn, of Glascock County, members-elect of the house of representatives of Georgia, are not eligible to seats therein under the laws of the United States: Therefore it is hereby ordered that the said R. A. Donaldson, E. M. Taliaferro, and J. H. Nunn be, and they hereby are, prohibited from taking part in the organization of said house, or from attempting to exercise the functions of a member thereof; and

"'Whereas the said board have found that Thomas F. Rainey, of Schley County; J. N. Harris, of Murray County; R. W. Phillips, of Echols County; L. C. A. Warren, of Quitman County; Joseph D. Smith, of Ware County; W. P. Price, of Lumpkin County; J. B. Sorrels, of Walton County; G. N. Harper, of Sumter County; C. C. Humber, of Stewart County; L. H. Walthall, of Polk County; and Isham Raddish, of Appling County, are eligible to seats in the said house under the laws of the United States, no objections will be made to their participating as members in the organization of the house; and

"'Whereas it appears that Frank Wilchar, of Taylor County, has since the commencement of the session of the board been, and is now reported to be, absent from the city, so that the board has not been able to determine in his case, it is therefore ordered that the said board still hold his case under consideration, and that in the mean time, and

until his case be heard and determined, said Wilchar be prohibited from taking any part in the organization or participating in the proceedings of the house; and

"'Whereas J. B. Burtz, of Mitchell County; J. A. Brinson, of Emanuel County; A. T. Bennett, of Jackson County; A. M. George, of Baker County; David Goff, of Randolph County; William J. Hudson, of Harris County; D. Johnson, of Wilcox County; Henry C. Kellogg, of Forsyth County; J. W. Meadows, of Johnson County; J. H. Penland, of Union County; Robert C. Surrency, of Tatnall County; J. R. Smith, of Coffee County; Hiram Williams, of Dooly County; John C. Drake, of Upson County; J. T. Ellis, of Spalding County; J. M. Routh, of Worth County, persons elected to said house, have refused, declined, neglected, or been unable to take one of the oaths prescribed by the act of December 22, 1869, although ample opportunity so to do has been given them, and have thus by the terms of said act become ineligible to seats in said house, and have also filed with the Hon. R. B. Bullock, governor, their applications to the Congress of the United States for relief from their disabilities, thus admitting their ineligibility to hold the offices to which they were elected: It is therefore ordered that the said persons be, and they hereby are, prohibited from taking seats in said house or participating in the organization or proceedings thereof.

"'By order of Brevet Major-General Terry:

"'J. H. TAYLOR,
"'*Assistant Adjutant-General.*'

"By this action three of the members-elect of the house were excluded on proof of their ineligibility, and eleven admitted on proof of their being eligible.

"One person was prohibited from participating until the further order of the general, he not having arrived at Atlanta, and his case not having been disposed of.

"And it was further declared that sixteen other members-elect were excluded from participating in the proceedings, as having refused, declined, neglected, or been unable to take the oaths, although ample opportunity so to do had been afforded them, and because they had applied for relief from disabilities.

"These steps having been taken, the persons admitted to seats proceeded to elect a speaker on the 26th of January, 1870, and the result was officially communicated to headquarters at Washington, as follows:

"'ATLANTA, *Ga.*, *January* 26, 1870.

"'House organized this morning by electing McWhorter, Republican candidate, as speaker. On report of board three persons were excluded as ineligible; eleven of those inquired into were pronounced eligible; sixteen who refused to take oath were declared to have become ineligible by their refusal; and one, whose case was sent to the board, having failed to appear, and being absent from the city, was forbidden to take part in organization. After careful examination of act of December 22, I decided that the fourth section would not permit me to seat the next highest candidates in place of ineligible persons.

"'ALFRED H. TERRY,
"'*Brevet Major-General.*

"'General E. D. TOWNSEND.'

"The intervening action of the military commander terminated at this time.

"Upon this history the committee are constrained to say that, in their opinion, the before-stated action of the military authorities was not authorized by law.

"The legislature elected in Georgia under the acts of Congress authorizing it was not a part of the government declared by the law not to be legal and to be provisional; but it was a part of the new government designed by Congress to take the place of the provisional government, as a permanent one. This seems perfectly clear from the words of the law; and this view of the subject was taken by the General of the Army by his order to General Meade, of March 2, 1868 (Meade's Rep., page 24), and again in the same way on the 29th of April, 1868 (Meade's Rep., page 30), as follows:

"'WASHINGTON, D. C., *March* 2, 1868.

"'The election proposed by the convention for officers under the new constitution I do not consider as an election for officers under the provisional government, referred to in section 6 of the act approved March 2, 1867. It is clear to my mind that a proper construction of section 4 of act approved March 23, 1867, does not authorize district commanders to fix or change the day of election after it has been designated by the convention.

"'U. S. GRANT, *General.*

"'Maj. Gen. GEORGE G. MEADE,
"'*Commanding Third Military District.*'

"'HEADQUARTERS WAR DEPARTMENT,
"'*Washington, D. C., April* 29, 1868.

"'I have carefully read your letter of 16th April, and its inclosures. I see nothing in them to change my opinion as expressed to you in my dispatch of March 2, 1868.

"'The officers elected under the new constitution of Georgia are not officers of the provisional government referred to in the reconstruction acts, nor are they officers elected under any so-called State authority, and are not therefore required to take the oath prescribed in section 9, act of July 19, 1867. The eligibility to hold office must be determined by the new constitution, and the amendment to the Constitution of the United States designated as article 14.

"'U. S. GRANT, *General.*

"'Maj. Gen. GEORGE G. MEADE,
"'*Commanding Third Military District.*'

"It does not follow from this that a legislature thus situated, and before the admission of the State, is independent of the laws of Congress. It is not; but it is thought that the correction of any misbehavior of it or its members rests with Congress, and not with the military.

"But however this might have been under the acts of March, 1867, the act of December 22, 1869, must be the special guide for the present purpose. It must be supposed that it speaks the will of Congress, even though that will may not accord with the acts of 1867, and even though it should be conceded (as it is not) that it would have been better had full discretion over the seating of the members of the Georgia legislature been left to the general in command. The question is what the law is, not what it might have been, or what it might be wished to be.

"The act only invokes military action in aid of what it provides shall be done; no more.

"The act, as has been seen, is clear and simple in its provisions. The governor was empowered to do one thing only, *i. e.*, summon the members-elect.

"That being done, the next duty was imposed in express terms on the general assembly of Georgia and its several members. The consequences of a failure to perform that duty were next pointed out in explicit language, *i. e.*, those who should neglect to qualify should not have seats, and those who should falsely obtain them should be punished by a specified civil tribunal in a specified way. And for these purposes, and subject to these conditions, it was provided, in order to secure the free and full compliance with the act, that any interference with members in their attempt to swear in, or in sitting, should be criminal.

"It has been suggested that the words in section 4, 'entitled to compose such legislature,' might be construed to vest in the military commander the power to decide what persons were entitled to sit; but it does not appear possible to do this in the face of the express prior provisions of the act giving every member the right of his own will to take one of the oaths prescribed, and in the face of the subsequent provisions declaring the interruption of any person 'elected as aforesaid' in taking the oaths and his seat to be criminal and punishable. But the clause in question does not look to conferring any authority, but is only a definition or description of the persons upon whom the law conferred the power to act, *i. e.*, those who by Meade's proclamation were elected and who should swear in.

"It has been seen that the legislature, as originally elected and organized in 186–, was not a 'provisional' legislature within the purview of the acts of reconstruction, but that it was a State legislature authorized by Congress to be elected and assembled, but not having *absolute* legislative power until the admission of the State to representation. And in this condition it is worthy of notice that when the act of December 22, 1869, was under consideration, this committee reported it with a provision making the legislature 'provisional' until the further action of Congress, and that provision *was rejected by the Senate.*

"For these reasons the committee is of opinion that the acts of Harris beforementioned, and the action of the general in command in excluding the persons who either had taken or were willing to take the oaths provided were not warranted by law.

"The order excluding those who confessedly declined to take the oaths was purely ministerial, and may be regarded as in proper compliance with the seventh section of the act.

"It is due to the general in command to say that the circumstances justify the committee in reporting that his whole conduct in the affair was under the sincere belief that he was acting within the limits of his lawful authority, and that under circumstances of much difficulty and delicacy he conducted affairs (although outside of the law) in such a manner as to command the personal confidence and respect of all parties and persons concerned. And the committee is also of opinion that the three persons

excluded, who desired to qualify, were persons who would have violated the act by taking the oath, so that in respect to them there was no actual injustice done.

"After the house of representatives had thus organized, it admitted to seats severa persons who, in the elections, had been candidates against the persons so excluded, bu had been beaten, receiving only a minority of the votes cast.

"On the hearing before the committee it was conceded that there was nothing in th constitution or laws of Georgia which would warrant such a proceeding, but it was con tended that this action was warranted by the general principles of parliamentary law which, it was claimed, authorized the body charged with deciding who is elected t treat as not cast all votes given for an ineligible candidate, and so to conclude that th eligible candidate having the greatest number of votes is the choice of the majority o the electors, although he in fact received only the votes of a minority.

"However this may be in cases in which a plurality elects, or in which the want o capacity in the candidate is of such a manifest and indisputable and notorious characte as to warrant the presumption that the electors in voting for him intended to throw away their votes (which the committee do not decide), it is clear that no such rule ca be applied to cases of the nature now under consideration, in which the test of eligibilit is somewhat broader than the one existing at the time of the election, and in which, i either case, the question depends on the true application of the law to conclusions o facts to be drawn from various circumstances, not necessarily notorious or indisputabl in their character.

"The committee are, therefore, obliged to conclude that the persons thus admitte were not lawfully entitled to seats in the Georgia legislature. And it should, perhaps be mentioned that on the hearing before the committee on the occasion of the consid eration of the act of December 22, 1869, it was contended by the persons asking con gressional intervention in the affairs of Georgia that there was no authority for th seating of minority candidates by the legislature, as had been done on the expulsion o the negro members; and that one distinct ground upon which the passage of that ac was rested as illegal and revolutionary was that fact. The interpretation of the law cannot be made to change according to the changing wishes of those who invoke it assistance.

"The committee, then, report, under the first-named resolution, that in the followin respects the organization of said legislature has not been warranted by law:

"1. In the control and direction of its proceedings by Harris.

"2. In the exclusion from taking the oaths and from seats of the three members elect who offered to swear in.

"3. In the seating of the persons not having a majority of the votes of the electors.

"In respect to the second resolution before recited, calling upon the committee t report whether any further legislation is necessary in respect to the organization of th legislature in Georgia, the committee report that a full hearing was given to both side of the controversy there, and that the representatives of the great body of those wh contended that the proceedings aforesaid had been illegal and irregular expressed thei willingness that Congress should refrain from further interference with the organizatio and composition of the legislature, and leave it to proceed in the exercise of legislativ functions, notwithstanding the matters before mentioned, if the provisions of the con stitution of Georgia and the ordinance of its convention could be carried out, providin for a fresh election of one-half the senators and all of the members of the house of repre sentatives in November, 1870. The other party justifies what has taken place, and o course objects to any action on the subject.

"In this condition of affairs, inasmuch as the errors of the general in command, befor stated, do not appear to have worked any serious injustice in point of fact, and as th error in seating the minority candidates was committed by the house of representative in the exercise of a right ordinarily belonging to it in the first instance; and inasmuc as it appears certain that the term of office of the members of the Georgia legislature an of its State government will expire at the same time that it would have done had th State been fully restored to its place in the Union in July, 1868, and do not commenc or run from the date of her future admission to representation, and that without refer ence to what might be the legal or literal construction of the last clause of the secon subdivision of the first section of the third article of the constitution of Georgia, in th following words: 'The general assembly may by law change the time of election, an the members shall hold until their successors are elected and qualified,' any interpreta tion of this constitution which should have the effect to allow the extension of the ter of office of the members of its general assembly at their own will and pleasure, an without a fresh expression of the will of the people, would be contrary to the essentia principles of free institutions, and, if carried into practice, subversive of a republica form of government in that State, which would authorize the constitutional interventio of the United States to correct it; and it could not have been the intention of the people

from whose adoption that constitution derives its authority, to confer such a power as this construction would give, nor could such have been the understanding of Congress when it passed the act of June 25, 1868; and inasmuch as the chief body of those aggrieved by the wrongs before stated is, upon the faith of this conclusion of the committee in the respects last mentioned, willing to accept the existing state of things; and as it appears to be of much importance to the people of the whole country as well as to the people of Georgia that the final and harmonious restoration of all the States lately in rebellion to full representation, privileges, and responsibilities as members of the Union should be accomplished at the earliest practicable moment, in order that the united and friendly efforts of the whole people may be given to the arts of peace and the means of true progress, the committee feel justified in omitting to recommend any further legislation on the subject of the organization of the legislature in Georgia."

Under the act of June 25, 1868, the legislature of Georgia, consisting by the constitution of that State of forty-four senators and one hundred and seventy-five representatives, was convened on the 4th of July, 1868, and, after having, so far as formality of procedure is concerned, complied with the provisions of that act, proceeded on the 28th of July, 1868, to the election of persons to represent said State in the Senate of the United States. The election was consummated in joint meeting of the two houses on the next day by the following vote: For Senator for the term ending March 4, 1873, Joshua Hill received 110 votes; Joseph E. Brown received 94 votes; Alex. H. Stephens received 1 vote; C. W. Styles received 1 vote; and Hill was declared duly elected. For Senator for the term ending March 4, 1871, the vote was as follows: H. V. M. Miller, according to the table as it appears in the journal, received 120 votes, but on counting the names of the persons recorded as voting, Miller received 117 votes; Foster Blodgett received 72 votes; J. L. Seward received 13 votes; A. T. Akerman received 6 votes; and Miller was declared duly elected. The colored members of the legislature, as well as those alleged to be disqualified, were present and participated in this election. It was not till September 3, more than a month afterward, that the legislature refused to recognize colored persons as members. Appended is a copy of the order of Major-General Meade, giving a list of the persons elected to the senate and house of representatives of Georgia, marked Exhibit A; also a copy of the vote in detail for Senators at the time Hill and Miller were elected, showing for whom each member voted, marked Exhibit B. Three of the members who voted for Hill, to wit, Donaldson, Taliaferro, and Nunn, after having taken the oaths required by the act of December 22, 1869, were, on investigation of a military commission, declared ineligible, and prohibited by military order from further participation in the reorganized legislature; and sixteen others, eleven of whom, to wit, Burtz, Drake, Ellis of Spalding County, George, Goff, Hudson, Johnson of Wilcox, Kellogg, Meadows, Penland, and Williams of Dooly, voted for Hill, and one of whom, Surrency, voted for Brown, were, by a like order, excluded from participating in said reorganization, as having refused or been unable to take the oaths required, and because they had applied for relief from political disabilities.

No inquiry into the eligibility of any of the sixteen thus excluded was made, and the order excluding two of them, to wit, Wilchar and Bennett, was subsequently revoked. Two others, M. J. Crawford and John C. Drake, have made affidavit that they were entitled to seats in the reorganized legislature, which by threats of prosecution they were deterred from occupying at the time. Their affidavits are appended, marked Exhibits C and D. Another of the sixteen, J. H. Penland, states as follows: "I was induced to sign an application for pardon through mistake, and did not mean thereby to admit that I labored under any disability to take the necessary oaths, and resume my seat in the house as a member from the county of Union." A copy of Penland's statement from the journal of the house is appended, marked Exhibit E.

The journal shows that Bradley, one of the senators who voted for Brown, was subsequently, on the 13th of August, 1868, declared to have been ineligible at the time of his election, in consequence of having been convicted of a penitentiary offense, the constitution of the State declaring any person ineligible who has been convicted of a crime punishable by imprisonment in the penitentiary. Before the vote was taken declaring Bradley ineligible, he resigned his seat in the senate.

Deducting those who were excluded by military order from taking part in the reorganized legislature, the result would be as follows: Hill, 96 votes; Brown, 93 votes; Stephens, 1 vote; Styles, 1 vote.

If the votes of Crawford, Drake, and Penland, who claim that they were improperly deterred from taking part in the reorganized legislature, be counted, then Hill's vote would be 99; and if Bradley's vote be deducted, Brown would have but 92 votes. Seventeen of those who voted for Miller, namely, Donaldson, Mason, Taliaferro, Burtz, Drake, Ellis, George, Goff, Hudson, Johnson, Kellogg, Meadows, Penland, Rouse, Smith of Coffee, Surrency, and Williams, were excluded by military order from taking part in the reorganized legislature. Deducting these from the votes cast when he was elected, the

result would be as follows: Miller, 100 votes; Blodgett, 72 votes; Seward, 13 votes; Akerman, 6 votes.

Besides the persons excluded by military order from taking part in the reorganized legislature, six senators, namely, Graham, Moore, Collier, Wynne, Anderson, and McCutchen, and four representatives, namely, Crawford, Long, Taliaferro, and McCullough, took no part in the legislature as reorganized, and minority candidates were seated in their places. No investigation into the eligibility of these six senators and four representatives appears to have been had. One of them (McCutchen) deceased about the time of the reorganization. The act of December 22, 1869, did not specify any time within which the persons declared elected by General Meade's proclamation should appear and qualify in the legislature as directed to be reorganized. Of the above senators and representatives, six, namely, Anderson, Moore, McCutchen, Crawford, Long, and Smith, voted for Hill, and one, Graham, voted for Styles.

The proceedings in the election of H. P. Farrow and R. H. Whiteley took place in the reorganized legislature, February 15 and 16, 1870. In the proceedings of Tuesday, February 15, in the house of representatives, the vote for Senator for the term ending March 4, 1873, was as follows: Henry P. Farrow, 80 votes; scattering, 2 votes. And for Senator for the term ending March 4, 1871, Richard H. Whiteley, 82 votes; scattering, 1 vote.

The constitution of Georgia declares that the senate shall consist of forty-four senators, and the house of representatives of one hundred and seventy-five representatives, and requires a majority of each house to constitute a quorum to do business. At the time of the election of the Senators last named one hundred and fifty-seven persons, of whom three were prohibited by military order from participating in the proceedings, and thirteen were minority candidates, whose names do not appear as elected by the proclamation of General Meade, had been sworn in as members of the house of representatives; and one of the sworn members, Robert Lumpkin, is said to have deceased before the Senatorial election. Deducting the thirteen minority members from the one hundred and fifty-seven, would leave one hundred and forty-four qualified members, of whom the journal shows but seventy-one to have been present at the time of Farrow's election by the house. If the three members excluded by military order, and the one said to have deceased, in addition to the minority members, be deducted, it would leave but one hundred and forty subsisting members; eleven of the thirteen voted for Farrow. February 2, 1870, on the question of the ratification of the fourteenth amendment to the Constitution of the United States, only seventy-one, out of one hundred and fifty-two sworn members of which the house then consisted, cast their votes, six of which were given by minority members.

The journal of the proceedings of the joint assembly of the two houses on Wednesday, February 16, shows that at 12 o'clock the senate attended in the hall of the house of representatives, and then follow the following entries: "The general assembly then proceeded to consolidate the vote of the two houses cast on yesterday for a United States Senator for the term ending March 4, 1873, and on consolidating the same it appeared that the Hon. Henry P. Farrow had received 109 votes; scattering, 2 votes." Then follows a list of the names of the senators, twenty-nine in all, and of the representatives, eighty in all, who voted for Mr. Farrow, and "scattering two," and Henry P. Farrow "was declared duly elected United States Senator for the term ending March 4, 1873."

A similar entry is made in the journal as to the election of R. H. Whiteley for the term ending March 4, 1871, except that Whiteley received 110 votes, and there was scattering 1 vote. (A copy of the journal of the house of representatives showing the proceedings in full upon the election of Farrow and Whitely in that body on the 15th, and of the joint assembly on the 16th of February, is hereto appended, marked Exhibit F.) Bradley, who had been declared ineligible by the senate in consequence of his conviction of a penitentiary offense, and had also resigned in August, 1868, without a re-election, appeared in the reorganized legislature of 1870, and voted for Farrow and Whiteley. It appears that no vote was taken in the joint assembly, as required by the act of Congress, when either house shall have failed to take proceedings as required by the act; but the fact that Farrow and Whiteley had received a majority of all the votes cast in each house, on the day previous, without inquiry whether a quorum of each house was present at the time, seems to have been regarded as sufficient to perfect their election.

Of the 109 votes cast for Farrow in both houses, 16 were given by persons not embraced in the list of persons named in General Meade's proclamation as elected, but by minority candidates, who had been seated in the places of those elected by the people, and who had not qualified in the second instance as members. The names of the minority members who voted for Farrow are: Crayton, Dunning, Henderson, Mathews, Traywick, of the senate; and Guilford, Goodwin, Hutchings, Holcomb, Harris of Glascock, Johnson of Forsythe, Johnson of Spalding, Jackson, Nesbit of Gordon, Rogers, and Thomason, of the house.

Mathews did not vote for Whiteley, but Armstrong, another minority member, did,

so that Farrow and Whiteley each received the votes of sixteen minority members, some of whom received less than half the number of votes cast for the majority candidate in whose place they were substituted, and all of whom, according to the unanimous report of this committee made at a former session, were admitted to seats in the legislature without authority of law. Deducting the 16 votes cast by minority members, and Farrow received in both houses the votes of ninety-three and Whiteley of ninety-four qualified members.

Deducting these sixteen minority members from the whole number, one hundred and eleven, present in the joint meeting of the general assembly, and it would leave but ninety-five present, considerably less than a "majority of all the members elected to both houses," as required by the act of Congress, but more than a majority of the persons who had qualified as members in the reorganized legislature.

The general assembly was organized in July, 1868, in *prima facie* accordance with the constitution of the State, the reconstruction acts of Congress, and the orders of the military department. It complied in form with all the requirements necessary to entitle the State to representation in Congress, and members were accordingly admitted into the House of Representatives of the United States in 1868. Whether either or both houses of the general assembly of Georgia admitted persons to sit as members in their respective bodies who were disqualified by the third section of the fourteenth article of the Constitution was at the time a disputed question; but each house appointed a committee to consider that question, after whose report it was voted by each house that all its members were qualified. These reports and the action upon the same appear in the appendix to the report made to the Senate by this committee, by Mr. Stewart, at the third session of the Fortieth Congress, and are hereto annexed, marked Exhibit G. The general assembly thus organized not only elected Senators of the United States, but it also elected, as required by the State constitution, State officers, to wit, a secretary of state, a comptroller-general, and a State treasurer, all of whom have since been discharging the duties of their respective offices without question. At the same session judges of the various courts throughout the State were appointed by the governor, by and with the advice and consent of the senate, who have since been and are now presiding in the various courts of the State. The legislature thus organized passed laws authorizing the borrowing of money and affecting the general interests of the State, none of which have ever been held or supposed to be invalid for the reason that the legislature which enacted them was not properly organized. The reason for the passage of the act of Congress of December 22, 1869, requiring a reorganization of the general assembly is to be found in the wrongful expulsion by the general assembly in September, 1868, of its colored members, in the seating of the minority candidates in their places, and in continuing in their seats members believed to be disqualified, and in the general disorder and violence which prevailed in the State. That act did not declare the general assembly as organized in July, 1868, to have been illegal, or its acts, other than those referred to in the act itself, invalid; but it provided for correcting the wrongful and revolutionary acts which had been done by it as organized in July, 1868. It is not believed that the act of December 22, 1869, would ever have been passed had the colored members been permitted to retain their seats and the peace of the State been preserved.

The body of the general assembly as organized in July, 1868, and as reorganized in January, 1870, is not essentially different. Of the forty-four senators and one hundred and seventy-three members declared elected by General Meade, only five senators and nineteen representatives who participated in the organization of July, 1868, were excluded or failed to participate in the reorganization in January, 1870, and twenty-one minority candidates were improperly admitted to seats in the general assembly, as reorganized, in their places. The general assembly as organized in July, 1868, and at the time of the election of Hill and Miller, contained in each house a constitutional quorum of legal members. All the contestants maintained the position before the committe that the ineligibility or disqualification of individual members of either house, not sufficiently numerous to affect its constitutional quorum, was an immaterial issue. Your committee have not, therefore, deemed it necessary to discuss that question further than to state the facts in regard to it. Three of the claimants—Joshua Hill, W. P. Farrow, and R. H. Whiteley—have had their political disabilities removed by act of Congress of June 25 and July 20, 1868. H. V. M. Miller never labored under any of the political disabilities imposed by the third section of the fourteenth amendment to the Constitution of the United States; but it is admitted that he acted as a surgeon in the rebel army under an appointment from a colonel of a rebel regiment, and having thus given aid to persons in hostility to the United States, cannot take the oath required by the act of July 2, 1862.

The act of July 11, 1868, prescribes a qualified oath to be taken by persons elected or appointed to office from whom political disabilities have been removed. Your committee are of opinion that Joshua Hill was duly elected by a legislature having authority

to elect Senators, and is entitled to take his seat on taking the oaths required by the Constitution and laws. Miller, however, is not relieved from taking the oath prescribed by the act of July 2, 1862, and in the opinion of your committee is not entitled to take his seat; and it follows from the conclusion of the committee as to the proceedings in the election of Hill and Miller that neither Farrow nor Whiteley is entitled to a seat.

The committee recommend for adoption the following resolution:

Resolved, That Joshua Hill has been duly elected Senator of the United States by the legislature of the State of Georgia, and is entitled to take his seat on taking the oaths required by the Constitution and laws.

I agree that Joshua Hill is entitled to take his seat; and I hold that H. V. M. Miller is entitled to take his seat on taking the oath prescribed by the Constitution.

A. G. THURMAN.

Mr. Stewart asked and obtained leave to submit the following as the views of the minority:

The undersigned, being unable to agree with the report of the majority of the committee, beg leave to submit the following:

The main question at issue is, which election shall be held valid; that of Hill and Miller, in July, 1868, or that of Farrow and Whiteley, in January, 1870? In the determination of this question much depends upon the point of time when Georgia became entitled to representation in Congress.

The ground assigned for the exclusion of Senators from the rebel States after the fall of the rebellion was that those States were not entitled to representation.

The report of the Reconstruction Committee, made at the first session of the Thirty-ninth Congress, on the 8th of June, 1866, reviewed the condition of these States, and proclaimed the doctrine that further guarantees were necessary for protection, peace, and union, and that it was the duty of Congress to exercise a legislative control over the whole subject until these objects were secured, and that neither House should pass upon the election and qualifications of its members until Congress had declared the State entitled to representation.

This report has formed the basis of the reconstruction policy of Congress, both in submitting constitutional amendments and in its legislative action.

We have been able to find no case in the history of the Government where Senators have been admitted from a State not entitled to representation in Congress at the time of their election.

There are many cases in which this legislative declaration was not made until after the election of Senators. This has occurred in the admission of new States where the organization of the State and the election of Senators had occurred previous to the admission. But in those cases the act of admission was an approval of the organization that had preceded it, and amounted to a legislative declaration that the State at the time of the election of Senators was entitled to representation. In each of these cases the loyal status of the State was unquestioned, and the act of Congress admitting such State was construed to relate back to the election of Senators, and to amount to a legislative declaration that the State at the time of the election was entitled to representation. This principle cannot help the case of Hill and Miller, for at the time the declaration was made by the act of July 15, 1870, that the State of Georgia was entitled to representation, the status of things had been changed in Georgia by the reorganization of the legislature. This declaration related to the then existing condition of the State.

Congress has already in effect decided that the necessary legislative declaration that Georgia was entitled to representation was not made prior to the election of Hill and Miller. The act of December 22, 1869, "to promote the reconstruction of Georgia," can be justified upon no other theory than that reconstruction in that State was not then an accomplished fact. After a compliance with this act, and not before, we have the declaration in the act of July 15, 1870, that "it is hereby declared that the State of Georgia is entitled to representation in the Congress of the United States." If this act relates back to the date of the election of Hill and Miller, their exclusion from seats in this body from July, 1868, until now is wholly without justification, and the act of December 22, 1869, was an exercise of power over a State entitled to representation for which there is no precedent; and which, if exercised in the case of Massachusetts or Ohio, would, to say the least, be open to grave constitutional doubts. It directs the governor to convene the persons originally elected to the legislature, and requires those persons, as a qualification for seats in that body, to take and subscribe to an oath hitherto unknown to the laws of the State of Georgia or of the United States; and it also required them to reorganize the legislature by electing officers, who shall also be required to take the same oath. It requires the legislature to ratifiy the fifteenth amendment before Senators and Representatives shall be admitted to seats in Congress, and prescribes

various other matters, all pertaining to the reconstruction of a rebel State, and never applied to a loyal State whose practical relations to the Union were not disturbed. We venture to affirm that the Senate and House of Representatives in voting for that act did so upon the theory that they were reconstructing a rebel State, and not upon the theory that they were dealing with a State whose practical relations with the United States had never been disturbed, or which. having been disturbed, were then fully restored. It seems clear that the requirement alone that the legislature should ratify the fifteenth amendment before Senators and Representatives should be admitted from Georgia was in itself a declaration that Georgia was not on the 22d of December, 1869, entitled to representation. But after the reorganization of the legislature under this act, the whole matter was again submitted to Congress, and Congress accepted the State as then organized. The act of July 15, 1870, was a legislative declaration that the State was then entitled to representation under the organization of the legislature as then existing, and related back to the commencement of the then existing state of things, namely, the reorganization of the legislature in January, 1870. This was a declaration that Georgia was entitled to representation at the time of the election of Farrow and Whiteley.

The language of the act of July, 1870, is "that the State of Georgia, having complied with the reconstruction acts, and the fourteenth and fifteenth articles of amendments to the Constitution of the United States having been ratified in good faith by a legal legislature of said State, it is hereby declared that the State of Georgia is entitled to representation in the Congress of the United States."

How can it be claimed that this language refers to the organization in 1868, in view of the facts in this case? Had the State of Georgia complied with the reconstruction acts at that date?

If this be so, Congress stultified itself in passing the act of the 22d of December, 1869, to promote the reconstruction of Georgia, eighteen months after she had fully complied with the reconstruction acts under which the other States were admitted.

It seems clear that this language embraced all the reconstruction laws with which Georgia was required to comply, including the act of December, 1869. It is evident that Congress intended to declare, and did declare, that after the compliance with the last-named act, and not before, Georgia was entitled to representation.

It is too late to question the propriety of these acts by either House acting separately upon the credentials of its members, for it is too well established that Congress must determine when a State is entitled to representation. After that determination has been made, neither House, acting alone, can question its validity, but each House is confined, in passing upon the credentials of its members, to matters of election and qualification.

We have shown that Hill and Miller were not elected from a State which, at the time, was entitled to representation by any act of Congress, from which it follows that they are not entitled to seats in the Senate.

We have also shown that Farrow and Whiteley were elected by a legislature of a State which Congress recognized as duly organized by declaring the State entitled to representation.

The election of these gentlemen seems to have been regular and a substantial compliance with law, and we therefore conclude that they are entitled to their seats.

We might stop here, resting the whole case on these acts of Congress, but it seems proper to embody in these views a more full history of the transaction.

The credentials of Mr. Hill were referred to the Committee on the Judiciary at the third session of the Fortieth Congress, and that committee, after a careful examination of the whole case, submitted a report, which, for convenience of reference, is hereto appended.

The committee which made this report was composed of Messrs. Trumbull, Stewart, Frelinghuysen, Edmunds, Conkling, Rice, and Hendricks. The report was made by Mr. Stewart, and concurred in by Messrs. Edmunds and Rice. Mr. Conkling concurred in the conclusion, and agreed that the report be made. Mr. Frelinghuysen signed the report with a further qualification, using the word "now," which, it must be admitted, makes it difficult to determine what he really meant.

Four of the committee, however, constituting a majority, concurred in the conclusion of the report.

We call especial attention to that conclusion, which is in the following significant language:

"Wherefore your committee feel called upon to recommend that Mr. Hill be not allowed to take his seat in the Senate for the reason that Georgia is not entitled to representation in Congress."

The four Senators who arrived at this conclusion are still members of the Senate and of the Judiciary Committee, and constitute a majority of that committee.

If Georgia was not entitled to representation, by what authority did she elect Senators? The right of representation cannot exist in a State without the right to elect per-

sons to represent such State. The converse of this proposition seems equally true, that where the right of representation does not exist there can be no right of election.

A point is made on the following language in the report of the committee made by Mr. Edmunds at the last session:

"It has been seen that the legislature, as originally elected and organized in 1868, was not a 'provisional' legislature within the purview of the acts of reconstruction, but that it was a State legislature authorized by Congress to be elected and assembled, but not having absolute legislative power until the admission of the State to representation."

We are unable to see clearly the distinction between a provisional legislature and a State legislature not having absolute legislative power. This seems to be a controversy about terms, not substance. The fact that Congress continued its legislative control is conclusive as to the status of the State, and the fact that Congress recognized and confirmed certain acts done by the legislature of Georgia is answered by the further fact that Congress also refused to sanction many other important acts of that same legislature. It refused to sanction the receiving and retaining of a large number of disqualified persons under the proposed fourteenth amendment. It refused to sanction the act of that legislature in expelling the colored members. It even refused to sanction the authority of the legislature, as then organized, to elect its own officers, and required an organization to be commenced *de novo*.

Notwithstanding all this it is maintained that this State, which was not entitled to representation, whose legislature had no power to elect a clerk or sergeant-at-arms, was clothed with all necessary power to elect a Senator of the United States.

Our opinion is that there was no legal organization of the legislature, by reason of a refusal to comply with the act of June, 1868, which says: * * * "But no person prohibited from holding office under the United States, or any State, by section 3 of the proposed amendment to the Constitution of the United States, known as article 14, shall be deemed eligible to any office in either of said States, unless relieved from disability, as provided in said amendment."

But it is said that whether the legislature did admit and retain disqualified persons is a disputed question. We never saw any reason for disputing that fact, nor the fact that it was done knowingly and willfully.

It seems, however, that if any doubt ever existed on that question, that the fact that on the reorganization a large number were either excluded or failed to qualify has settled all reasonable doubts. Who can doubt that of the large number who failed to qualify under the reorganization there were many ineligible persons?

But we will not differ about terms in this controversy. It may be called a State legislature without absolute power of legislation, a provisional legislature, or an illegally organized legislature.

We have shown that it did not have all the power of the legislature of a State whose practical relations with the Union were intact, but on the contrary that Congress continued to legislate to promote the reconstruction of Georgia long after the election of Hill and Miller, with the declared purpose of restoring the practical relations of that State to the Union. It is true that this legislature was not in existence at the time of the passage of the original reconstruction acts, and probably was not one of the provisional governments referred to in those acts. Nevertheless, Congress continued its legislative authority over the State, and practically treated the government therein as provisional. The fact that it was organized under the new constitution of Georgia did not of itself deprive it of its provisional character. It did not cease to be provisional until Congress declared the State entitled to representation. All the provisional governments in the South were organized under State constitutions, but Congress refused to regard them as legal State governments, and subjected them to the paramount authority of the United States. When the credentials of Mr. Hill were before this committee on a former occasion, the position taken by the report submitted to the Senate was that the legislature had failed to comply with the act of Congress providing for its organization, and that the existence of any legislature authorized to act as such was the issue involved.

They say: "For the purposes of this report, however, your committee did not deem it necessary to ascertain the number of disqualified persons admitted. But the fact that any were knowingly admitted was not only a violation of the fourteenth amendment, and a failure to comply with the requirements of Congress, but manifests a disposition to disobey and defy the authority of the United States. If one could be admitted why not all? And will it be contended that if the entire body had been composed of men who had usurped the functions of the legislature against the express provisions of the reconstruction acts, they could have complied with the provisions of those acts so as to create any obligation on the part of Congress to receive their Senators and Representatives?

* * * * * * *

"It is quite probable that Mr. Hill received votes of persons who were not qualified to hold seats in the legislature more than sufficient to constitute his majority and secur

his election, but your committee do not propose to investigate that question. The election and qualification of members of the legislature where the existence of any legislature authorized to act as such is not involved cannot be inquired into by the Senate in determining the right of a Senator to his seat. Your committee hold that the question involved in this case is not whether persons not entitled to seats in the legislature were received by that body and allowed to vote upon the election of a Senator, but whether the body assuming to be the legislature violated the conditions upon which it was allowed to organize by permitting disloyal persons to participate in its proceedings. It may be contended that although the matters hereinbefore set forth constitute a failure on the part of the State of Georgia to comply in every respect with the reconstruction acts, yet Congress ought to waive these slight departures and admit their representatives. But an examination into the subsequent proceedings of the legislature of Georgia, and the disorganized condition of society in that State, leads your committee to the conclusion that all these violations of law were in pursuance of a common purpose to evade the law and resist the authority of the United States."

It is now contended that the Senate should waive the rebellious acts of this pretended legislature and accept the Senators it elected while it was knowingly and willfully defying the authority of the United States; and this, too, after Congress in its legislative capacity has, in effect, declared this organization illegal by ordering a reorganization to be made. So radical had been the legislation of Congress in respect to Georgia that it was deemed necessary in the act admitting the State, passed on the 15th of July last, to expressly ratify certain things that had been done to avoid the conclusion that Congress intended to annul all the acts of this pretended State government. The language of that law is as follows:

"But nothing in this act contained shall be construed to deprive the people of Georgia of the right to an election for members of the general assembly of said State, as provided for in the constitution thereof; and nothing in this or any other act of Congress shall be construed to affect the term to which any officer has been appointed or any member of the general assembly elected as prescribed by the constitution of the State of Georgia."

Why say that this act should not deprive the people of Georgia of an election under their constitution at the time fixed therein, if the act itself was an approval of what they had done and related back to the organization of the State? Why say that nothing in this or any other act of Congress shall affect the term to which any officer has been appointed, or any member of the general assembly elected, if the act itself was to be construed to relate back to the first organization and amount to a legislative declaration that Congress approved of that organization? The fact is, that these acts of Congress had treated the State as not yet fully reconstructed, and it was thought necessary to expressly approve certain important matters, to the end that it might not be claimed that they were disapproved.

If Congress had intended to approve of the election of Senators, it seems natural that such intention should have appeared in the list of those things which were not to be affected or disturbed.

It is suggested that there is some doubt about the regularity of the election of Mr. Farrow, for the reason that there was no quorum present in the house of representatives at the time of his election. The records show that the house, when reorganized and disloyal members excluded, consisted of one hundred and fifty-four members, and Mr. Farrow alleges that one member, Robert Lumpkin, who had been sworn in, died before the Senatorial election, leaving the number one hundred and fifty-three. A quorum of this number would be seventy-seven. The number of persons present and voting was eighty-two, of which Mr. Farrow received eighty. But it is said that minority men were improperly admitted. We might answer this by saying they were admitted by the legislature, and that the Senate will not ordinarily review the action of that body in deciding upon the qualification of its own members.

But if the Senate would enter upon such an investigation under any circumstances (which on mature reflection we now think may be open to some doubt) it cannot be called upon to do so in this case. The question of the proper organization of the legislature in January, 1870, was, at the last session, under investigation in both Houses, on the passage of the act of July 15, 1870. The report of the Judiciary Committee of the 2d of March last, printed as a part of the majority report, recommends that no further legislation be had to perfect the organization of the legislature of Georgia as it then existed, and Congress, acting on that report, decided it to be a legal legislature.

But admitting that the minority men were improperly received, the result would be the same.

The number of members declared elected in General Meade's order, who were allowed to qualify and retain their seats, leaving out of the calculation those who are known as "minority men," was one hundred and forty-one.

Deducting Mr. Lumpkin, who is alleged to have died before the Senatorial election,

and we have one hundred and forty. Necessary to a quorum, seventy-one. of persons present and voting on the election of Mr. Farrow, seventy-one. Of t ber Mr. Farrow received sixty-nine. Thus it appears in either case a quorum ent, and Mr. Farrow had a majority of that quorum.

All other matters in regard to the election of Messrs. Farrow and Whitele lieve, are admitted to have been regular.

We therefore recommend for adoption a resolution declaring Henry P. Fa Richard H. Whiteley elected, and entitled to seats in the Senate on taking t required by law.

WM. M. STEV
B. F. RICE.

The following is the resolution proposed:

Resolved, That Henry P. Farrow and Richard H. Whiteley are entitled to t seats in the Senate, upon taking the oath prescribed by law.

MONDAY, *January* 30

On motion by Mr. Trumbull, that the further consideration of the said bill poned, and that the Senate proceed to the consideration of the resolution re the Committee on the Judiciary, declaring that Joshua Hill has been duly Senator by the legislature of the State of Georgia, and is entitled to take hi taking the oaths required by the Constitution and laws, it was determined in t ative; and the Senate proceeded to consider the said resolution.

After debate,

On motion by Mr. Stewart to amend the resolution by striking out all after "resolved," and inserting in lieu thereof the words,

"That Henry P. Farrow and Richard H. Whiteley are entitled to take thei the Senate, upon taking the oath prescribed by law,"

It was determined in the negative—yeas 19, nays 36.

On motion by Mr. Stewart, the yeas and nays being desired by one-fifth of t tors present,

Those who voted in the affirmative are Messrs. Abbott, Ames, Boreman, B Gilbert, Hamilton of Texas, McDonald, Nye, Osborn, Pomeroy, Pool, Pratt, Rice, Stearns, Stewart, Sumner, Thayer, and Wilson.

Those who voted in the negative are Messrs. Bayard, Blair, Buckingham, C Casserly, Chandler, Conkling, Corbett, Cragin, Davis, Edmunds, Fenton, Flanag ler, Hamilton of Maryland, Hamlin, Harlan, Howard, Howe, Johnston, Kell Creery, Morrill of Vermont, Patterson, Ross, Schurz, Sherman, Sprague, Stockt man, Tipton, Trumbull, Vickers, Warner, Willey, and Williams.

So the amendment was not agreed to.

On motion by Mr. Stewart to amend the resolution by striking out the name Hill" and inserting the name "Henry P. Farrow,"

After debate,

On motion by Mr. Chandler (at 5 o'clock and 5 minutes p. m.), the Senate adj

[The debate is found on page 816 of the Congressional Globe, part 1, 3d Cong., and on pages 817–830 in part 2 of the same.]

TUESDAY, *January* 31

The Senate resumed the consideration of the resolution reported by the Com the Judiciary, declaring Joshua Hill duly elected a Senator of the United Stat legislature of the State of Georgia and entitled to take his seat in the Senate up the oaths required by the Constitution and laws; and

Pending debate thereon, the following message was received, &c.

[The debate is found on pages 848–851 of the Congressional Globe, part 2 41st Cong.]

WEDNESDAY, *February* 1

Mr. Trumbull submitted the following resolution for consideration:

"*Resolved*, That H. V. M. Miller has been duly elected a Senator by the le of Georgia, for the term ending March 4, 1871."

Mr. Stewart submitted the following resolution for consideration:

"*Resolved*, That Richard H. Whiteley is entitled to take his seat in the Sen taking the oath prescribed by law."

The Senate resumed the consideration of the resolution reported by the Com the Judiciary, declaring Joshua Hill to be duly elected a Senator of the Unite and entitled to take his seat upon taking the oaths prescribed by the Constit laws; and the question being upon the amendment proposed by Mr. Stewart, out the name "Joshua Hill" and insert the name "Henry P. Farrow,"

After debate, it was determined in the negative—yeas 19, nays 37.

On motion by Mr. Stewart, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Abbott, Ames, Boreman, Brownlow, Chandler, Gilbert, Hamilton of Texas, Nye, Osborn, Pomeroy, Pratt, Ramsey, Robertson, Spencer, Stearns, Stewart, Sumner, Thayer, and Wilson.

Those who voted in the negative are Messrs. Anthony, Bayard, Blair, Buckingham, Carpenter, Casserly, Conkling, Corbett, Cragin, Edmunds, Fenton, Flanagan, Fowler, Hamilton of Maryland, Hamlin, Harlan, Harris, Howard, Johnston, Kellogg, McCreery, Morrill of Vermont, Patterson, Ross, Saulsbury, Sawyer, Scott, Sherman, Sprague, Stockton, Thurman, Tipton, Trumbull, Vickers, Warner, Willey, and Williams.

So the amendment of Mr. Stewart was not agreed to; and

On the question to agree to the resolution reported by the Committee on the Judiciary, it was determined in the affirmative.

So it was

Resolved, That Joshua Hill has been duly elected Senator of the United States by the legislature of the State of Georgia, and is entitled to take his seat on taking the oaths required by the Constitution and laws.

Whereupon

Mr. Hill apppeared, and the oaths prescribed by law having been administered to him by the Vice-President, hetook his seat in the Senate.

[The debate is found on pages 871–874 of the Congressional Globe, part 2, 3d sess. 41st Cong.]

FRIDAY, *February* 24, 1871.

The Vice-President stated that the message of the President of the United States, just received, announced that he had approved and signed the "Joint resolution * prescribing the oath to be taken by H. V. M. Miller, Senator-elect from the State of Georgia," and requested Mr. Miller, Senator-elect from the State of Georgia, whose credentials were presented on the 11th day of January, 1869, to come forward and take the oath of office.

Whereupon

Mr. Miller appeared, and the oaths prescribed by law were administered to him by the Vice-President, and he took his seat in the Senate.

COMPENSATION OF SENATORS AND CONTESTANTS.

SATURDAY, *February* 25, 1871.

Mr. Trumbull submitted the following resolution; which was read, and passed to a second reading:

"*Resolved*, That the Secretary of the Senate be directed to pay to the Senators from the State of Georgia the compensation allowed by law, from the 29th day of July, 1868; and to H. P. Farrow and Richard H. Whiteley, contestants from the State of Georgia, compensation from the 16th day of February, 1870, the date of their election by the reorganized legislature of Georgia, to 30th day of January, 1871, when the Senate decided they were not entitled to seats."

MONDAY, *February* 27, 1871.

On motion by Mr. Trumbull, the Senate proceeded to consider the resolution submitted by him on the 25th instant, directing the Secretary of the Senate to pay the Senators from the State of Georgia; and the resolution was agreed to.

* The proceedings of the Senate relating to this joint resolution are omitted

[Forty-first Congress—Second session.]

H. R. REVELS,

Senator from Mississippi from February 25, 1870, *till March* 3, 1871.

February 23, 1870, the credentials of Mr. Revels were presented. A resolution was submitted that they be referred to the Committee on the Judiciary with instructions to inquire whether he had been nine years a citizen of the United States, and whether the person certifying to his election was the governor of the State. Mr. Revels's credentials were signed by Adelbert Ames, brevet major-general United States Army, provisional governor of Mississippi. The act of July 25, 1866, provided "that it shall be the duty of the governor of the State from which any Senator shall have been chosen as aforesaid to certify his election" &c. It was contended that this was not such a certificate as was required by that act. It was also contended that Mr. Revels, being partly of African blood, had not been nine years a citizen of the United States; that he was not a citizen at birth, following the decision of the Dred Scott case; that he became a citizen only on the ratification of the fourteenth amendment in 1868. After debate, the motion to refer the credentials was determined in the negative, and Mr. Revels took the oath of office February 25. Extracts from remarks given below will show the grounds upon which certain Senators proceeded.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journal, 2d sess. 41st Cong., with extracts from remarks of Messrs. Vickers and Scott.

Special references to the debates of each day, which are found in the Congressional Globe, part 2, 2d sess. 41st Cong., are inserted below.

WEDNESDAY, *February* 23, 1870.

Mr. Wilson presented the credentials of H. R. Revels, elected a Senator by the legislature of the State of Mississippi for the unexpired portion of the term ending March 4, 1871; which were read.

Mr. Wilson presented a certified extract from the proceedings of the house of representatives of the State of Mississippi, also a certified extract from the proceedings of the senate and house of representatives of the State of Mississippi, relative to the election of H. R. Revels as a Senator in Congress; which were read.

Mr. Saulsbury objected to the reception of the credentials; and

After debate, the Vice-President submitted the question to the Senate: Shall the credentials be received? It was determined in the affirmative.

Whereupon

Mr. Stockton submitted the following resolution:

"*Resolved*, That the credentials of Hiram R. Revels, who is now claiming a seat in this body as a Senator-elect from the State of Mississippi, be referred to the Committee on the Judiciary, who are hereby requested to inquire and report whether he has been a citizen of the United States for the period of nine years, and was an inhabitant of the said State at the time of his alleged election in the sense intended by the third section of the first article of the Constitution of the United States, and whether Adelbert Ames, brevet major-general and provisional governor of Mississippi, as appears by the credentials, was the governor of the State of Mississippi at the time, and whether he was an inhabitant of the said State."

On the question to agree to the resolution of Mr. Stockton,

After debate,

On motion by Mr. Thayer (at 5 o'clock), the Senate adjourned.

[The debate is found on pages 1503–1514 of the Congressional Globe referred to in the head-note.]

THURSDAY, *February* 24, 1870.

The Senate resumed the consideration of the motion to refer the credentials of H. R. Revels, elected a Senator by the legislature of the State of Mississippi for the unexpired portion of the term ending March 4, 1871, with certain instructions; and

After debate, the Senate adjourned.

[The debate is found on pages 1542–1544 of the Congressional Globe referred to in the head-note. Mr. Saulsbury's speech is found on pages 125–130 of the Congressional Globe, part 7, Appendix, 2d sess. 41st Cong.]

FRIDAY, *February* 25, 1870.

The Senate resumed the consideration of the motion of Mr. Stockton to refer the credentials of H. R. Revels, elected a Senator by the legislature of the State of Mississippi for the unexpired portion of the term ending March 4, 1871, to the Committee on the Judiciary, with instructions to inquire and report whether he has been a citizen of the United States for the period of nine years, and was an inhabitant of the said State at the time *of his alleged* election in the sense intended by the third section of the first article of

the Constitution of the United States; and whether Adelbert Ames, brevet major-general and provisional governor of Mississippi, as appears by the credentials, was the governor of the State of Mississippi at the time, and whether he was an inhabitant of the said State; and

After debate, on the question to agree to the motion, it was determined in the negative—yeas 8, nays 48.

On motion by Mr. Pomeroy, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Casserly, Davis, Hamilton, McCreery, Saulsbury, Stockton, and Vickers.

Those who voted in the negative are Messrs. Abbott, Anthony, Boreman, Brownlow, Buckingham, Cameron, Carpenter, Chandler, Cole, Conkling, Corbett, Drake, Fenton, Ferry, Fowler, Gilbert, Hamlin, Harlan, Harris, Howe, Howell, Kellogg, Lewis, McDonald, Morrill of Maine, Morrill of Vermont, Nye, Osborn, Pomeroy, Pool, Pratt, Ramsey, Rice, Robertson, Ross, Sawyer, Schurz, Scott, Sherman, Spencer, Stewart, Sumner, Thayer, Tipton, Trumbull, Willey, Williams, and Wilson.

So the motion was not agreed to.

On motion by Mr. Wilson, that the oaths prescribed by law be now administered to Mr. Revels, it was determined in the affirmative—yeas 48, nays 8.

On motion by Mr. Pomeroy, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Abbott, Anthony, Boreman, Brownlow, Buckingham, Cameron, Carpenter, Chandler, Cole, Conkling, Corbett, Drake, Fenton, Ferry, Fowler, Gilbert, Hamlin, Harlan, Harris, Howe, Howell, Kellogg, Lewis, McDonald, Morrill of Maine, Morrill of Vermont, Nye, Osborn, Pomeroy, Pool, Pratt, Ramsey, Rice, Robertson, Ross, Sawyer, Schurz, Scott, Sherman, Spencer, Stewart, Sumner, Thayer, Tipton, Trumbull, Willey, Williams, and Wilson.

Those who voted in the negative are Messrs. Bayard, Casserly, Davis, Hamilton, McCreery, Saulsbury, Stockton, and Vickers.

So the motion was agreed to; and

The oaths prescribed by law were administered to Mr. Revels by the Vice-President, and he took his seat in the Senate.

[The debate is found on pages 1557–1568 of the Congressional Globe referred to in the head-note.]

[Extract from remarks of Mr. Vickers, of Maryland, in support of the resolution submitted by Mr. Stockton. Delivered in the Senate February 25, 1870, and found on pages 1557, 1558, and 1560 of the Congressional Globe referred to in the head-note.]

"The subject before the Senate is one which relates to the eligibility of an individual elected to this body. That question involves the three qualifications which the Constitution of the country requires of persons before they can take a seat in this Assembly: the first, that they shall have been citizens of the United States for nine years; secondly, that they shall be inhabitants of the State from which they are elected; and thirdly, that they shall be of the age of thirty years.

"Now, the question of reference to the Committee on the Judiciary includes all three inquiries, whether this party is thirty years of age, is a legal inhabitant of the State of Mississippi, and has been a citizen of the United States for nine consecutive years. I do not propose to dwell upon any of these propositions except the one of citizenship; and the question for the Senate to consider is whether he has been a citizen of the United States for nine years. That is the point which I wish to present to and impress upon the judgment of the Senate.

"I shall rely mainly on the judgment of the Supreme Court of the United States in the case of Scott *vs.* Sandford, which has been referred to, and upon the opinion delivered by Chief-Justice Taney on behalf of a large majority of that court.

"I know that decision has been denounced not only in the Senate but in the country, but it stands unrepealed, and is the adjudicated law of the land. Chief-Justice Taney was in social life one of the most exemplary of men. His private character was pure and unsullied. He was honest, just, and faithful. He performed all the duties of private, social, and public life with that fidelity and correctness which we should expect from a man so virtuous and exalted. There has never been a blemish upon his private or his public life. I believe, although I am not fully qualified to say, that he was not a slaveholder. I think he was not, and I am sure that I am justisfied in saying that after he was placed upon the bench he separated himself from the politics of the country and never exercised the right of suffrage. His ambition was to make an upright, able, and impartial judge, and he entered and left public office with as clean hands as any man that ever lived in this country. He entered it poor and he left it in the same condition, and bequeathed as a heritage to his family a high, pure, and exalted reputation.

"So much for the character of the judge. Now, what was that opinion? It was upon a case which involved the citizenship of a suitor in the courts of the United States. The Constitution gave jurisdiction to those courts between parties who are citizens of differ-

ent States. The very question presented to the consideration of the court was whether the parties plaintiff, Dred Scott and others, were citizens of the United States within the constitutional intendment. To show that the court desired nothing but impartial justice, the case was ably argued twice at different terms, in order that the most thorough examination, discussion, and deliberation might be had on a matter of such magnitude. And what, under the circumstances, was the duty of the court? It was to decide whether the parties plaintiff were citizens according to the Constitution. That was incumbent upon them, and there was no alternative. This necessarily brought up to the attention and consideration of the court the condition of the parties. They were of African descent, and the question naturally arose, and it was so argued, are they citizens of the United States and qualified to sue in its courts? A large majority of the court decided that they were not citizens of the United States.

"I did not suppose that any one would have found fault with the court for the performance of this duty. They were bound to decide according to their convictions; but the complaint was, as was stated by the Senator from Delaware yesterday, that they departed from this question and went into an argument upon the condition of this class of people and the right of masters to take them into the Territories of the United States. We all know that there was great excitement in the country at that period in reference to the constitutional right of a master to take his slaves north of the Missouri line of 36° 30′. Some of these parties had been taken by their owners north of the Missouri line into what was called free territory, and this fact necessarily brought to the consideration and examination of the court the question whether the owner of a slave had a right to take him into a Territory of the United States.

"That decision, I know, has been animadverted upon here as it has been elsewhere. But have not other decisions been condemned? Was not that upon the fugitive slave law severely criticised in the country, and probably in Congress, too, by the Freesoilers? The senior Senator from Massachusetts [Mr. Sumner] said in reference to it that he did not feel bound to sustain that law after the Supreme Court had decided in favor of its constitutionality; and yet that decision was made by a unanimous court. There was perfect unanimity upon the question of its constitutionality.

"But I have waited with anxiety to hear a refutation of any single position which the Supreme Court took in the decision of the Dred Scott case. I know it is easy to censure a decision and get up a political clamor against it, but I want to know if any single position of fact or of law which that court announced has ever been successfully controverted. I have not heard it attempted in the Senate of the United States. I have not heard a single argument against the correctness of the legal positions or to any statement of fact asserted by the court.

"And now, when a case has been so solemnly adjudicated by a court forming one of the co-ordinate branches of the Government, and whose duty it is to determine grave constitutional questions, I ask if any reason can be assigned against the decision of that case or any of the principles involved in it? Denunciation should be disregarded by an intelligent people while the principles of the opinion stand unassailed and irrefragable.

"What were some of the propositions of law decided by that tribunal?

"1. That when the Constitution was adopted persons of African descent were not regarded in any of the States as members of the community which constituted the States, and were not numbered among its people or citizens; consequently, the special rights and immunities guaranteed to citizens did not apply to them.

"2. That no State could by any subsequent law make a foreigner or any other description of persons citizens of the United States.

"3. That a State might by its laws put a foreigner, or any other description of persons, upon a footing with its own citizens; but that would not make him a citizen of the United States, nor entitle him to sue in its courts, nor to any of the privileges and immunities of a citizen in another State.

"The disqualification of the African race was as radical, fundamental, and perfect as language could make it. This is by a co-ordinate department of the Government, existing by the same Constitution as Congress; in its origin, design, and objects as thoroughly constitutional; in its powers and jurisdiction superior, because State and national legislation is measured and limited by the Constitution according to its judgment. Its decisions and decrees are as binding as the Constitution itself."

* * * * * * *

"I suppose there is not a Senator on this floor who voted either for the civil rights bill or for the submission of the constitutional amendment to the States but what believed it was absolutely necessary and indispensable to make these people citizens of the United States; without the passage of that bill in the opinion of some, and without the passage and adoption of the constitutional amendment in the opinion of others, they would not have been citizens of the United States. After the civil rights bill was passed and when it passed there were serious objections to it. It was doubtful in the minds of many whether grants by legislative enactment could make a citizen of the

United States; whether it did not require a constitutional amendment to make them such; and the better opinion was that it did require it, because by the Constitution they were not made citizens. You proceeded on the very ground that it was absolutely requisite that the amendment should be made which made the party now claiming his seat a citizen of the United States from the time of its approval only; from that time he became a citizen; and as nine years have not elapsed, how can we, upon our oaths and in view of the decisions of the Supreme Court, the practice of the Government, the decisions of all the State courts, the opinions of the Attorneys-General, say that in our opinion he was a citizen of the United States before the passage of the civil rights bill or of the fourteenth constitutional amendment?

"This is not a political but a judicial question, and ought to be decided by us as judges and not as politicians. In the Dred Scott case the Supreme Court said—

"'That, looking to the contemporaneous history and to the contemporaneous legislation of the several States at the time the Constitution was adopted, the use of the word "citizen," as employed in that Constitution, was to exclude the African and every race but the white.'

"The court looked into the construction of this provision. They took a deliberate view of the contemporaneous history of the States and the condition of the country at the time. This was proper and necessary to a full understanding of the subject. In a debate which took place in the Senate of the United States on the 7th of February, 1866, the senior Senator from Massachusetts [Mr. Sumner] assumed the ground that no State had a republican government that tolerated slavery; and it was in reference to that that the late Mr. Fessenden, who was so distinguished in this body, as he was in every public station which he occupied, said in reply:

"'I ask the question that he may answer it, because after all he will admit, as a lawyer, as we all must, that in construing a constitution, and construing a statute, and construing any provision, we look at contemporaneous history in the first place, and we look more particularly, when endeavoring to find out what the sense of an instrument is, at all its clauses in order to get the meaning of all, for one explains the other. It would seem to me that the Senator went a little too far with his argument as to the guarantee clause.'

"The opinion of Mr. Fessenden was that in construing the Constitution we must look at the contemporaneous history of the country. The Senator from Oregon [Mr. Williams] said yesterday that the decision in the Dred Scott case applied only to persons of African descent whose ancestors had been sold into slavery. Now, I ask how came that race among us? Is it not a historical fact that they were brought here and sold; that they were made articles of traffic; that they did not come here of their own accord; and that from those people have descended the whole of that class of population among us? They were denied naturalization. In the States where slavery existed the courts held that color, whether of the dark, mulatto, or mixed, was presumptive evidence of slavery, and the onus of proving emancipation or freedom rested upon the person. The courts of the United States always follow the decisions of State courts in matters local or affecting the relations or peculiar interests existing in them. If this subject shall be referred to a committee, there will be no difficulty in proving the race to which the claimant belongs, if appearances should not satisfy the most fastidious. The colonists coming from the bosom of Europe necessarily brought with them, to some extent, the feelings and sentiments of the nations toward this class of persons. The court, in reviewing the facts and the history of the condition of this people in the case alluded to, said that they did not migrate to America; and—

"'It is difficult at this day to realize the state of public opinion in relation to that unfortunate race which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.

"'They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race.'"

[Extract from remarks of Mr. Scott, of Pennsylvania, in opposition to the resolution submitted by Mr. Stockton. Delivered in the Senate February 25, 1870, and found on page 1565 of the Congressional Globe referred to in the head-note.]

"The proposal is to refer his credentials to the Judiciary Committee for the purpose of making inquiry as to whether he has been a citizen of the United States for nine years. It is admitted that he is a citizen now, and therefore he is admissible as a Senator unless there be some disqualification. *What is that* disqualification? It is alleged

that he is a man of color, and that therefore he was not a citizen prior to the enactment of the civil rights bill. Now, sir, no one stands here to question that his citizenship was an open question before the adoption of the civil rights bill. The history of the litigation that had occurred in various States, and that finally got into the Supreme Court of the United States in the Dred Scott case, is enough to show that a question was made as to whether a colored man was or was not a citizen of the United States. The decisions in Kentucky, the decisions in Connecticut, the decisions in my own State, the discussion which took place upon the admission of Missouri into the Union, the Dred Scott case, the universal discussion of this question at one period in our history—these are enough to show that the public mind was not settled upon the question. But if it was not settled then, could it be more effectively settled than it has been, first by the passage of the civil rights bill, and then, if that was not sufficent as a mere act of Congress to determine the status of citizenship in the face of a decision of the Supreme Court, surely it will not be contended that the fourteenth constitutional amendment, declaring that all persons born within the United States are citizens, is not sufficient to settle it.

"The civil rights bill, if its text be turned to, and the fourteenth amendment, if its text be turned to, will be found to be both declaratory. They do not enact that 'from henceforth all persons born within the United States shall be citizens,' but the present tense is used in both: 'all persons' 'are citizens of the United States.' If that be sufficient to settle the question, if that be enough as a declaratory law to declare that all persons born within the limits of the United States are citizens of the United States, where does this man stand who now presents himself as Senator-elect from Mississippi?

"It is urged by gentlemen on the other side that he became a citizen only by virtue of one or the other of these enactments; but if they turn to the history of that clause of the Constitution of the United States on which they rely they will find that it was inserted both in reference to Senators and to Representatives in the other House of Congress, and also in reference to the President, because of the apprehension that was felt of foreign influences in our Government. In the discussion which occurred in the convention—I have it here, but will not take the time of the Senate to read it—on fixing the qualifications of Senators it was especially dwelt upon that the Senate being the body which was to pass upon treaties with foreign governments, it was particularly necessary that the period of citizenship should be extended and made longer for a Senator than for a member of the House of Representatives. The discussion of Mr. Madison in the Federalist of this clause shows that the purpose, the reason, the intention of this clause in the Constitution of the United States was that persons who had been born abroad should not be permitted to become Senators until after they had been citizens a certain length of time. That is the reason, that is the spirit of the law; and it is a maxim which I need not quote, that the reason ceasing the law ceases with it.

"Here, then, is a man born in the United States, not an alien, not a foreigner, who comes here elected by a State legislature. No question is raised as to his qualification as to age; no question is raised as to his qualification in any other respect than as to whether he has been a citizen of the United States for nine years. Now, even if the doctrine contended for by the gentlemen on the other side were true, that he was not a citizen until the time of the passage of the civil rights bill or until the adoption of the fourteenth constitutional amendment, still he is not within the meaning of that clause of the Constitution which requires a man to be a citizen for nine years. The meaning, the spirit of that was, that no man should occupy this place who had been naturalized as a foreigner until nine years had elapsed after his naturalization."

[Forty-first Congress—Second session.]

ADELBERT AMES,

Senator from Mississippi from April 1, 1870, *till he resigned in* 1874.

January 18, 1870, Mr. Ames was elected to fill the vacancy in the term beginning March 4, 1869. February 25, 1870, the credentials were presented and referred to the Committee on the Judiciary. March 18, the committee reported the following facts: Mr. Ames was born in Maine, in 1835, where he resided with his parents until 1856, when he entered West Point. Continuing in the military service, he was ordered to Mississippi in 1868. June 15, of that year he became provisional governor by appointment of General McDowell, then district commander, and in March, 1869, he became himself district commander by assignment of the President. These two positions Mr. Ames was holding at the time of the election. Mr. Ames testified that shortly before the election, being then in Mississippi, he determined to be a candidate and decided to remain and reside in Mississippi, and publicly declared that intention. After his election he resigned his commission. This, he states, was after the passage (February 17, 1870), but before the approval (February 23, 1870) of the bill declaring Mississippi entitled to representation in Congress. Mr. Ames's parents had continued to live in Maine until 1862, and some of his papers and effects remained at his father's house. In 1862 his parents removed to Minnesota, carrying with them the effects of their son in their possession. In subsequent years Mr. Ames occasionally visited Maine, but owned no land there and occupied no habitation there of his own. The committee reported that Mr. Ames was not, when elected, an inhabitant of that State for which he was chosen, within the meaning of the third clause of the third section of the first article of the Constitution. They reported the resolution "that Adelbert Ames is not eligible to the seat in the Senate of the United States to which he had been appointed." After long debate the Senate resolved, April 1, 1870, that he was eligible to the seat, and he took the oath of office.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journal, 2d sess. 41st Cong., and the report of the committee from Senate Reports, 2d sess. 41st Cong., No. 75.

Special references to the debates of each day, which are found in the Congressional Globe, part 3, 2d sess. 41st Cong., are inserted below.

FRIDAY, *February* 25, 1870.

Mr. Robertson presented the credentials of Adelbert Ames, elected a Senator in Congress by the legislature of the State of Mississippi for the unexpired portion of the term commencing on the 4th day of March, 1869; which were referred to the Committee on the Judiciary.

FRIDAY, *March* 18, 1870.

Mr. Conkling, from the Committee on the Judiciary, to whom were referred the credentials of Adelbert Ames, elected a Senator by the legislature of the State of Mississippi for the unexpired term ending the 4th day of March, 1875, submitted a report (No. 75) thereon, accompanied by the following resolution. [Resolution found at end of report.]

REPORT OF COMMITTEE.

[The committee consisted of Messrs Trumbull (chairman), Stewart, Edmunds, Conkling, Rice, Carpenter, and Thurman.]

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1870.—Ordered to be printed.

Mr. Conkling, from the Committee on the Judiciary, submitted the following report:

The Committee on the Judiciary, to whom were referred the credentials of Adelbert Ames, claiming to be Senator-elect from the State of Mississippi, report the following facts and conclusions:

Mr. Ames was born in Maine in 1835, and resided with his parents in that State until 1856, when he entered the Military Academy at West Point. From 1856 he remained in the military service of the United States until he resigned his commission, which he states was after the passage, but before the approval by the President, of the bill finally declaring Mississippi entitled to representation in Congress.

Until 1862 his parents continued to reside in Maine, and such articles and papers of his as would naturally be kept at his home remained at his father's house. In 1862 his parents removed to Minnesota, carrying with them the effects of their son in their possession, and in subsequent years he occasionally revisited Maine, but owned no land and occupied no habitation there of his own.

In 1868 he was ordered to Mississippi; on the 15th of June in that year he became provisional governor by appointment of General McDowell, then district commander, and in March, 1869, he became himself district commander by assignment of the President of the United States. These relations continued modified, if modified at all, only as will presently appear.

The election seems to have been regular, and waiving any criticism of the form of the certificate, no question has been made touching the right of Mr. Ames to take his seat, except in regard to the legal character of his residence in Mississippi.

The provision of the Constitution of the United States under which the question arises is this:

"No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen."

It will be seen that to be eligible as a Senator of the United States, a person, in addition to other qualifications, must be an inhabitant of the State for which he is chosen, and he must be such an inhabitant "*when elected.*"

The election in this instance occurred on the 18th day of January, 1870.

At this time Mr. Ames was a military officer, stationed in Mississippi by order of superior military authority, and acting as provisional governor by appointment from General McDowell, as already stated. His presence in these two characters comprises everything bearing upon the question of his residence in Mississippi down to the time when he became a candidate for the Senate. The precise date cannot be fixed, but not long before the election General Ames determined to allow his name to be submitted to the legislature as one of those from which the choice of Senators might be made.

Having reached this determination, and in connection with it, General Ames declared, as far as he did declare it, his intention in regard to his future residence. His language as delivered to the committee touching his declarations and acts is as follows:

"Upon the success of the Republican ticket in Mississippi I was repeatedly approached to become a candidate for the United States Senate. For a long time I declined—I wrote letters declining. A number of persons in Mississippi visited this city to find arguments by which I might be influenced to become a candidate. I hesitated because it would necessitate the abandonment of my whole military life. Finally, for personal and public reasons, I decided to become a candidate and leave the Army. My intentions were publicly declared and sincere. (The intentions thus declared were not only to become a candidate for the Senate, but to remain and reside in Mississippi.) I even made arrangements, almost final and permanent, with a person to manage property I intended to buy. This was before I left Mississippi. My resignation was accepted by the President before he signed the bill to admit the State."

The conclusion of the committee upon these facts is that General Ames was not, when elected, an inhabitant of the State for which he was chosen, and that he is not entitled to take his seat.

The committee therefore recommend the adoption of the following resolution:

Resolved, That Adelbert Ames is not eligible to the seat in the Senate of the United States to which he has been appointed.

MONDAY, *March* 21, 1870.

[A motion was made by Mr. Morton that the Senate proceed to the consideration of the resolution reported by the committee. After debate, the motion was withdrawn. The debate is found on pages 2087, 2088 of the Congressional Globe referred to in the head-note. This motion does not appear in the Senate Journal.]

TUESDAY, *March* 22, 1870.

The Senate proceeded to consider the resolution reported by Mr. Conkling from the Committee on the Judiciary on the credentials of Adelbert Ames, claiming to be a Senator-elect from the State of Mississippi, viz:

"*Resolved*, That Adelbert Ames is not eligible to the seat in the Senate of the United States to which he has been appointed."

After debate,

On motion by Mr. Hamlin, the Senate adjourned.

[The debate is found on pages 2122, 2123, 2125–2135 of the Congressional Globe referred to in the head-note.]

WEDNESDAY, *March* 23, 1870.

The Senate resumed, &c., and

After debate,

On motion by Mr. Thurman (at five minutes before 5 o'clock p. m.) that the Senate adjourn, it was determined in the affirmative—yeas 28, nays 25.

[The debate is found on pages 2156–2169 of the Congressional Globe referred to in the head-note.]

MONDAY, *March* 28, 1870.

The Senate resumed, &c.
[No debate took place.]

TUESDAY, *March* 29, 1870.

The Senate resumed, &c.
[No debate took place.]

WEDNESDAY, *March* 30, 1870.

The Senate resumed, &c.
[No debate took place.]

THURSDAY, *March* 31, 1870.

The Senate resumed, &c.
Pending debate thereon,
Mr. Morrill, of Maine, presented a resolution adopted by the legislature of the State of Mississippi to facilitate the admission of Adelbert Ames to a seat in the Senate of the United States; which was read.
Ordered, That it lie on the table.
After further debate,
On motion by Mr. Hamlin (at 5 o'clock p. m.), the Senate adjourned.
[The debate is found on pages 2303–2316 of the Congressional Globe referred to in the head-note.

FRIDAY, *April* 1, 1870.

The Senate resumed the consideration of the following resolution, reported by the Committee on the Judiciary, on the credentials of Adelbert Ames, claiming to be a Senator-elect from the State of Mississippi, viz:
"*Resolved*, That Adelbert Ames is not eligible to the seat in the Senate of the United States to which he has been appointed."
After debate,
On motion by Mr. Sumner to amend the resolution by striking out the word "not,"
After further debate,
On the question to agree to the amendment proposed by Mr. Sumner, it was determined in the affirmative—yeas 40, nays 12.
On motion by Mr. Pomeroy, the yeas and nays being desired by one-fifth of the Senators present,
Those who voted in the affirmative are Messrs. Abbott, Brownlow, Cameron, Cattell, Chandler, Cole, Corbett, Cragin, Drake, Fenton, Flanagan, Gilbert, Hamilton of Texas, Hamlin, Harris, Howard, Howe, Howell, McDonald, Morrill of Maine, Morrill of Vermont, Nye, Osborn, Patterson, Pomeroy, Pool, Ramsey, Revels, Rice, Ross, Scott, Sherman, Spencer, Stewart, Sumner, Thayer, Tipton, Warner, Williams, and Wilson.
Those who voted in the negative are Messrs. Bayard, Carpenter, Casserly, Conkling, Davis, Edmunds, McCreery, Norton, Pratt, Schurz, Trumbull, and Vickers.
So the amendment was agreed to; and,
On the question to agree to the resolution as amended, it was determined in the affirmative.
So it was
Resolved, That Adelbert Ames is eligible to the seat in the Senate of the United States to which he has been appointed.
And thereupon the oaths prescribed by law were administered to Mr. Ames by the Vice-President, and he took his seat in the Senate.
Mr. Drake submitted the following resolution; which was considered, by unanimous consent, and agreed to:
"*Resolved*, That the Secretary of the Senate be directed to pay the Senators from the State of Mississippi the compensation allowed by law, from the 23d day of February, 1870, and the Senators from the State of Texas from the 30th day of March, 1870, the dates of the acts declaring said States, respectively, entitled to representation in the Congress of the United States."
After the consideration of executive business, the Senate adjourned.
[The debate is found on pages 2335–2349 of the Congressional Globe referred to in the head-note.]

[Forty-first Congress—Second session.]

OSSIAN B. HART vs. ABIJAH GILBERT,

of Florida.

April 1, 1870, the petition of Mr. Hart, claiming to be entitled to a seat in the Senate f beginning March 4, 1869, and held by Abijah Gilbert, was presented and referred to the on the Judiciary. The facts in regard to the elections were as follows: Florida had be representation in Congress from 1861 to 1868. After the passage of the reconstruction act the passage of the act declaring Florida entitled to representation in Congress, the le Florida, on the second Tuesday after its organization, proceeded, in accordance with the gress of July 25, 1866, "regulating the times and manner of holding elections for Senat gress," to the election of two Senators to fill vacancies in the terms ending March 3, 1869, a 1873. At the end of three days these two elections had been made. On the fourth day the proceeded to the election of a Senator for the term beginning March 4, 1869, and Mr. elected. In January, 1870, the same legislature held a new election and elected the petiti term to which it had previously elected Mr. Gilbert. The petitioner claimed that the ele Gilbert was void because he had been elected before the passage of the act declaring Flor to representation, and because he had not been elected in accordance with the act of July asmuch as the legislature had failed to take action on the "second Tuesday after its orga in regard to the third Senator who was to be elected, but only in regard to the two Se were to fill the existing vacancies, and had taken no action in regard to the election Senator until the third day after the "second Tuesday." April 13, 1870, the committee regard to the first objection that the subsequent recognition of the State government ma relation, its acts from the time of its organization; and in regard to the second objecti object of the act of Congress was to fix a time when proceedings for the election of Sena be commenced and continued till the elections were effected, and that this legislature h conformity therewith. They recommended the adoption of a resolution that Abijah duly elected and entitled to hold the seat, which was agreed to without a division April 2 Hart was allowed mileage and compensation.

The history of the case here given consists of a transcript of the proceedings of the Sen to it from Senate Journal, 2d sess. 41st Cong., and the report of the committee from Sena 2d sess. 41st Cong., No. 101.

Special references to the debates, which are found in parts 3 and 4 of the Congression sess. 41st Cong., are inserted below.

FRIDAY, *April*

Mr. Osborn presented the petition* of Ossian B. Hart, of Florida, claiming titled to a seat in the Senate as a Senator duly elected by the legislature of t Florida, and asking that his claim to said seat may be investigated by the Sena was referred to the Committee on the Judiciary and ordered to be printed.

[Remarks accompanying the presentation of the petition are found on pa 2331 of part 3 of the Congressional Globe referred to in the head-note.]

WEDNESDAY, *April* 1

Mr. Trumbull, from the Committee on the Judiciary, to whom was referred tion of Ossian B. Hart, claiming to be entitled to the seat in the Senate now h Hon. Abijah Gilbert, as a Senator in Congress from the State of Florida, sub report (No. 101), accompanied by the following resolution. [Resolution found report.]

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Trumbull (chairman), Stewart, Edmun ling, Rice, Carpenter, and Thurman.]

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1870.—Ordered to be printed.

Mr. Trumbull, from the Committee on the Judiciary, submitted the followi

The Committee on the Judiciary, to whom was referred the petition of Ossia of Florida, claiming a seat in the Senate from the State of Florida for the te commenced March 4, 1869, report as follows:

In consequence of the rebellion the State of Florida was without representat

* Found in Senate Miscellaneous, 2d sess. 41st Cong., No. 102.

Senate of the United States from 1861 till 1868. In pursuance of a constitution framed and adopted under what are known as the reconstruction acts, a legislature convened in Florida, Monday, June 8, 1868, the members of the assembly and half of the senate having been elected for two years, and the other half of the senate for four years.

This legislature, on the 16th day of June, 1868, being the second Tuesday after its meeting and organization, proceeded in accordance with the act of Congress of July 25, 1866, "regulating the times and manner of holding elections for Senators in Congress," to take action for the election of two United States Senators to fill the then existing vacancies for the terms expiring on the 3d of March, 1869, and the 3d of March, 1873. On Wednesday, the day following that on which each house had separately but without result voted for Senators to fill the two existing vacancies, the members of the two houses convened in joint assembly, elected a Senator to fill the vacancy expiring March 3, 1869, and adjourned till the next day, when they again assembled and elected a Senator for the term expiring March 3, 1873, and adjourned without date.

The next day (Friday) the members of the two houses, each house having previously concurred in a resolution to that effect, assembled again in joint convention for the election of a Senator to succeed the one whose term would expire on the 3d of March, 1869, when Abijah Gilbert, the present sitting member, was elected.

The petitioner was chosen by the same legislature in January, 1870, to represent the State in the Senate for the term commencing March 4, 1869, and now claims the seat occupied by Mr. Gilbert.

The elections of 1868 all took place before the passage of the act of June 25, 1868, which declared Florida entitled to representation in Congress.

Two objections are taken to the election of the sitting member:

1. That he was chosen by the legislature of a State not at the time recognized as entitled to representation in Congress.

2. That he was not elected in conformity with the act of July 25, 1866.

The first objection is answered by the fact that the subsequent recognition of the State as entitled to representation under the Constitution, in pursuance of which the legislature was elected and organized, related back to and made valid its acts from the time of its organization. Senators and Representatives from several of the reconstructed States have been chosen before the States were declared entitled to representation, and no one has ever questioned their right to seats when Congress subsequently recognized the government under which they were chosen as entitled to representation.

The only ground for the other objection arises from the fact that the legislature failed to take action on the "second Tuesday after its organization" in regard to the third Senator who was to be elected, but it took action on the subject of electing Senators, and actually voted, though unsuccessfully, on that day for persons to fill the two existing vacancies.

The object of the act of Congress was to insure the election of Senators by the proper legislature, and to fix a time when proceedings for that purpose should be commenced and continued till the elections were effected.

The legislature by which the sitting member was elected was the one chosen next preceding the term which would commence on the 4th of March, 1869, and was, therefore, the proper legislature to elect. "The second Tuesday after the meeting and organization of the legislature" was the time prescribed by the act of Congress for initiating the election of Senators, and that was the time when the legislature proceeded to that business. There being three Senators to elect, it took action on that day only in reference to two of them. Did its failure to take action on that day, and the two subsequent days (which were occupied in electing the first two Senators), in reference to the third Senator, render his election, in all other respects regular, invalid? The committee think not.

The language of the law is: "In case no person shall receive such majority on the first day, the joint assembly shall meet at 12 o'clock, meridian, of each succeeding day during the session of the legislature, and take at least one vote till a Senator shall be elected." No formal adjournment from day to day by vote of the joint assembly was necessary, but it was the duty of the members of each house to meet in joint assembly at noon of each day and vote at least once till all the Senators whom the legislature had the right to elect were chosen. This is exactly what the legislature did.

In no view which the committee can take would the petitioner be entitled to a seat in the Senate, for if the election of the sitting Senator was irregular, that of the petitioner, by the same legislature at a subsequent session, was equally so.

The committee recommend for adoption the following resolution:

Resolved, That Abijah Gilbert was duly elected a Senator from the State of Florida for the term commencing March 4, 1869, and is entitled to hold his seat as such.

FRIDAY, *Apr*

Mr. Trumbull presented the memorial* of Ossian B. Hart, praying th allowed to be heard in argument before the Senate in support of his clai the Senate as a Senator duly elected by the legislature of the State of Flo

Ordered, That it lie on the table.

[The debate is found on pages 2705, 2706 of part 3 of the Congressional to in the head-note.]

THURSDAY, *Apr*

On motion by Mr. Trumbull, the Senate proceeded to consider the resol from the Committee on the Judiciary, declaring that Abijah Gilbert was Senator from the State of Florida for the term commencing March 4, 1869, to hold his seat as such; and the resolution was agreed to.

[The debate is found on pages 3053, 3054 of part 4 of the Congressional to in the head-note.]

MONDAY, *M*

Mr. Howe submitted the following resolution; which was read the fi times, by unanimous consent, and referred to the Committee to Audit an Contingent Expenses of the Senate:

"*Resolved*, That the Secretary of the Senate be directed to pay out of t fund of the Senate to O. B. Hart, claimant of a seat in the Senate from the ida, the usual mileage of a Senator and the monthly pay from the date of credentials until the passage of the resolution declaring him not entitled t

TUESDAY, *M*

Mr. Ferry, from the Committee to Audit and Control the Contingent E Senate, to whom was referred the resolution of May 2, 1870, to pay O. B. H mileage of a Senator for one session and pay from the date of presenting until the passage of the resolution declaring him not entitled to a seat, rep out amendment.

WEDNESDAY, *M*

The Senate proceeded to consider, as in Committee of the Whole, the res O. B. Hart the usual mileage of a Senator for one session and the monthly ator from the date of presenting his credentials until the adoption of the the Senate declaring him not entitled to a seat in the Senate of the Unit Senator from the State of Florida; and no amendment being made, it was r Senate.

Ordered, That it be engrossed and read the third time.

The said resolution was read the third time.

Resolved, That it pass.

* Found on page 2705 of part 3 of the Congressional Globe referred to in the head-

[Forty-second Congress—First session.]

JOSEPH J. REYNOLDS vs. MORGAN C. HAMILTON, *of Texas.*

July 13, 1870, the credentials of Mr. Hamilton, elected for the term beginning March 4, 1871, were presented. March 3, 1871, the credentials of Mr. Reynolds, elected for the same term, were presented. March 4, both credentials were referred to the Committee on Privileges and Elections. The facts in regard to the elections were as follows: Texas had been without representation in Congress from 1861 to 1870. After the passage of the several acts for the reconstruction of Texas, but before the passage of the act declaring her entitled to representation in Congress, the legislature of Texas, in February, 1870, proceeded, in accordance with the act of Congress of July 25, 1866, "regulating the times and manner of holding elections for Senators in Congress," to the election of Senators to fill vacancies in the terms ending March 3, 1871, and March 3, 1875. At the same time the legislature elected Mr. Hamilton for the term beginning March 4, 1871. The Senators elected to fill the vacancies were admitted to their seats. By the constitution of Texas there was another session of the same legislature after the elections referred to, and before March 4, 1871. The legislature at this second session passed a resolution declaring the election of Mr. Hamilton illegal, and on the second Tuesday after its organization elected Mr. Reynolds. Mr. Reynolds claimed the seat on the ground that the election of Mr. Hamilton was void, because he had been elected before the passage of the act declaring Texas entitled to representation, and because there was another session of the legislature after the election of Mr. Hamilton, and before the commencement of the term for which he was elected. March 18, the committee reported the facts as above, and the conclusions that the case was precisely like that of Hart and Gilbert (see page 320); that the election of Mr. Hamilton had been in accordance with the act referred to, which declares "that the legislature of each State which shall be chosen next preceding the expiration of the time for which any Senator was elected to represent said State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator," &c.; and that the subsequent recognition of the State government of Texas had made valid, by relation, its acts from the time of its organization, so that the fact that the State was not admitted to representation when Mr. Hamilton was elected was immaterial. They recommended that Mr. Hamilton be admitted to his seat. He was admitted without debate.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 41st Cong. and 1st sess. 42d Cong.; and the report of the committee from Senate Reports, 1st sess. 42d Cong., No. 2.

There were no debates.

[Forty-first Congress.]

WEDNESDAY, *July* 13, 1870.

Mr. Nye presented the credentials of Morgan C. Hamilton, elected a Senator in Congress by the legislature of the State of Texas for the term of six years commencing on the 4th day of March, 1871.

The credentials were read.

Ordered, That they lie on the table.

FRIDAY, *March* 3, 1871.

Mr. Morton presented the credentials of Joseph J. Reynolds, elected a Senator in Congress by the legislature of the State of Texas for the term of six years commencing on the 4th day of March, 1871.

The credentials were read.

[First session of the Forty-second Congress.]

SATURDAY, *March* 4, 1871.

Mr. Flanagan here submitted a motion that the oaths prescribed by law be administered by the Vice-President to Morgan C. Hamilton, whose credentials as Senator-elect from the State of Texas were presented on the 13th of July, 1870.

Mr. Morton presented a certified copy of a joint resolution of the legislature of the State of Texas, approved January 26, 1871, providing for the election of a United States Senator from that State on the 24th day of January, 1871, for the term of six years commencing on the 4th day of March, 1871, and declaring the election of Morgan C. Hamilton, on the 22d of February, 1870, as Senator for said term, illegal; which was read.

On motion by Mr. Morton,

Ordered, That the resolution of the legislature of the State of Texas and the credentials of Mr. Morgan C. Hamilton and Mr. Joseph J. Reynolds lie on the table.

MONDAY, *March* 13, 1

On motion by Mr. Anthony,

Ordered, That the credentials of Joseph J. Reynolds, and the credentials of M C. Hamilton, with the resolution of the legislature of Texas, declaring the elec said Hamilton on the 22d of February, 1870, as Senator from that State for six from March 4, 1871, illegal, be referred to the Committee on Privileges and Elect

WEDNESDAY, *March* 15, 1

The Vice-President laid before the Senate the credentials of J. J. Reynolds, el Senator in Congress by the legislature of the State of Texas for the term of six commencing on the 4th day of March, 1871.

The credentials were read.

[The letter accompanying the credentials states that inadvertently the govern not signed the credentials presented March 3.]

SATURDAY, *March* 18, 1

Mr. Stewart, from the Committee on Privileges and Elections, to whom was r the credentials of Morgan C. Hamilton, the credentials of Joseph J. Reynolds, a resolution of the legislature of the State of Texas declaring the election of Mor Hamilton illegal, submitted a report (No. 2) thereon, accompanied by the followi olution:

"*Resolved*, That Morgan C. Hamilton was duly elected a Senator from the S Texas for the term commencing March 4, 1871, and is entitled to take his seat a upon taking the required oaths."

The Senate, by unanimous consent, proceeded to consider the said resolution; a resolution was agreed to.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Stewart, Morton, Rice, Hamlin, Hill, and man.]

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1871.—Ordered to be printed.

Mr. Stewart, from the Committee on Privileges and Elections, submitted the f ing report:

The Committee on Privileges and Elections, to whom was referred the credent the Hon. Morgan C. Hamilton, Senator-elect from the State of Texas, submit t lowing report:

That in pursuance of the several acts of Congress for the reconstruction of the of Texas, the legislature convened on the 8th and completed its organization 10th of February, 1870. On the 22d of February, 1870, second Tuesday after its ization, the legislature elected the Hon. Morgan C. Hamilton a Senator of the U States for the term commencing on the 4th of March, 1871.

The same legislature on the same day elected the Hon. J. W. Flanagan a Sen the United States for the term ending March 3, 1875, and the Hon. Morgan C. Ha for the term ending March 3, 1871. These last two elections were to fill vacancie existing, and both of these Senators were admitted to their seats.

By the constitution of Texas there was another session of the same legislature Texas, after the election of Mr. Hamilton, and before the expiration of his term. session commenced on the 10th of January, 1871, and on the second Tuesday a organization proceeded to the election of a Senator for the term commencing on t of March, 1871, the same term for which Mr. Hamilton had been elected at th ceding session.

General J. J. Reynolds is represented to have been elected, although the cert referred to the committee is not signed by the governor.

The reasons assigned for the election of General Reynolds are that the legis had no authority to elect Mr. Hamilton at the time of his election, first, becau State had not at that time been recognized as entitled to representation in Congres secondly, because there was another session of the legislature after the election o Hamilton, and before the commencement of the term for which he was elected.

The case of Hon. Abijah Gilbert, Senator from Florida, is precisely in point both of these questions.

The act of Congress of July 25, 1866, declares "that the legislature of each which shall be chosen next preceding the expiration of the time for which any S

was elected to represent said State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress in the place of such Senator so going out of office, in the following manner."

The fact that the State was not admitted to representation until after the election of Mr. Hamilton is immaterial. The act admitting Texas to representation related back to the organization, and ratified the proceedings of the legislature.

The committee therefore recommend that Mr. Hamilton be permitted to take his seat on taking the oath prescribed by the Constitution and the laws.

MONDAY, *March* 20, 1871.

Mr. Morgan C. Hamilton, from the State of Texas, attended, and the oaths prescribed by law were administered to him by the Vice-President, and he took his seat in the Senate.

[Forty-second Congress—First and second sessions.]

GEORGE GOLDTHWAITE,

Senator from Alabama from January 15, 1872, *till March* 3, 1877.

February 6, 1871, the credentials of Mr. Goldthwaite, elected for the term beginning March 4, 1871, were presented. March 4, a protest of members of the legislature of Alabama against his admission to a seat in the Senate was presented; which, with the credentials, was ordered to lie on the table. March 13, the credentials and protest were referred to the Committee on Privileges and Elections. March 20, the committee reported that there would not be time at that session of Congress fully to consider the grounds upon which his right to a seat was contested, and reported a resolution that he be permitted to take his seat, and that the committee proceed thereafter to consider the grounds of the protest and report to the Senate thereon. This report and resolution included the case of Foster Blodgett, of Georgia, it being unanimous as to Mr. Goldthwaite, two dissenting as to Mr. Blodgett. A motion was made to amend the resolution by striking out the name of Foster Blodgett, but after debate it was ordered that the resolution lie on the table. January 9, 1872, in the next session of Congress, the case of Mr. Blodgett having been disposed of, the Senate resolved "that George Goldthwaite be permitted to take a seat in this body as a Senator from the State of Alabama upon taking the proper oath; and that the Committee on Privileges and Elections proceed hereafter to consider the grounds on which his right to a seat in the Senate is contested, and hereafter make report to the Senate thereon." January 15, Mr. Goldthwaite took his seat. No further report was made on the case, and the Senate took no further action in regard to it. The chief grounds of the protest (given below) were that some of the members of the legislature voting for Mr. Goldthwaite were not legally elected, having been either defeated at the polls or having procured their elections through fraud; that one member voting for Mr. Goldthwaite had no certificate of election to the legislature; that some members voting for him were under political disabilities.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 3d sess. 41st Cong., and 1st and 2d sess. 42d Cong.; the report of the committee from Senate Reports, 42d Cong., 1st sess., No. 3; and a copy of the protest above referred to from the Congressional Globe, part 1, 1st sess. 42d Cong., pages 1, 2.

Special references to the debates of each day are inserted below.

[Third session of the Forty-first Congress.]

MONDAY, *February* 6, 1871.

Mr. Spencer presented the credentials of George Goldthwaite, elected a Senator by the legislature of the State of Alabama for the term of six years commencing on the 4th of March, 1871.

The credentials were read.

[First session of the Forty-second Congress.]

MONDAY, *March* 4, 1871.

Mr. George Goldthwaite, whose credentials were presented on the 6th day of February last, appeared to take the oaths prescribed by law, when

Mr. Sherman presented a protest signed by forty-five members of the senate and house of representatives of the legislature of the State of Alabama against the admission of George Goldthwaite to a seat in the Senate as a Senator from said State; which was read.

After debate,

On motion by Mr. Sherman,

Ordered, That the protest, with the credentials of Mr. Goldthwaite, lie upon the table.

[The debate is found on pages 1–4 of the Congressional Globe, part 1, 1st sess. 42d Cong.]

Protest of members of the Alabama legislature against the admission of Mr. Goldthwaite to a seat in the Senate.

MONTGOMERY, ALA., *January* 26, 1871.

To the Senate of the United States:

The subscribers, members of the senate and house of representatives of the State of Alabama, respectfully represent:

That they protest against the admission of Hon. George Goldthwaite to the Senate of

l States as a Senator from Alabama, on the grounds that he was not elected by r of the legal votes of the joint meeting of the legislature. He was declared the following vote: For George Goldthwaite, 65 votes; for Willard Warner, 50; m J. Haralson, 14 votes. It will be seen that 65 votes constitute a majority es cast, and that number of legal votes are necessary to an election.

esent that Hon. George Goldthwaite did not receive that number of legal votes, Henry, claiming to be a representative from Russell County, in said State, who Hon. George Goldthwaite, was not elected by the people of said county, did not tificate of his election, as is required by our laws, but was defeated at the polls l hundred, and was not legally entitled to vote for a United States Senator in meeting of the legislature, which, if said illegal votes had been rejected, would sufficient to prevent the announcement of the election of Hon. George Gold- a seat in your honorable body.

adford, of Talladega county, who had been rejected by the people at the ballot- permitted to vote for said Hon. George Goldthwaite, when in our opinion his ld have been rejected, as he had never been legally elected a member of the e.

counties of Greene, Sumter, Lee, and other counties, the representatives of voted for Hon. George Goldthwaite, we have every reason to believe that the of said representatives were procured by intimidating the voters, and in several fraud added thereto, and that the gentlemen claiming to be representatives of nties were not legally elected by the people of said counties, are not their legal atives, and were not entitled to vote for United States Senator at the joint meet- general assembly.

informed that some of the members of the legislature who voted for Hon. oldthwaite are laboring under political disabilities imposed by the fourteenth nt of the Constitution of the United States, and it is an inquiry worthy the tion of the Senate of the United States whether Hon. George Goldthwaite is not under the same disabilities for his actions during the recent rebellion of the States.

ng, therefore, that Hon. George Goldthwaite is not legally elected Senator from we respectfully pray that the Senate of the United States may so decide, and s seat vacant.

ames of the signers are here omitted.]

MONDAY, *March* 13, 1871.

ion by Mr. Anthony,

l, That the credentials of George Goldthwaite, and the protest of members of ature of the State of Alabama against the election of said Goldthwaite as a Sen- e United States by the legislature of said State, be referred to the Committee ges and Elections.

MONDAY, *March* 20, 1871.

wart, from the Committee on Privileges and Elections, to whom were referred ntials of Foster Blodgett, with the memorial of members of the legislature of of Georgia, protesting against the admission of said Blodgett to a seat in the the United States as a Senator from that State, and the credentials of George ite, with the protest of sundry members of the legislature of the State of Ala- inst the election of said Goldthwaite, submitted a report (No. 3) thereon, ac- d by the following resolution. [Resolution found at end of report.]

REPORT OF COMMITTEE.

IN THE SENATE OF THE UNITED STATES.

MARCH 20, 1871.—Ordered to be printed.

wart, from the Committee on Privileges and Elections, submitted the follow- t:

mmittee on Privileges and Elections, to whom were referred the credentials of oldthwaite, claiming a seat in this body as a Senator from the State of Alabama, credentials of Foster Blodgett, claiming a seat in this body as a Senator from of Georgia, report:

aid credentials are in due form, and *prima facie* entitle said Goldthwaite and to their seats upon taking the oath prescribed by the Constitution and laws, f them being under any disability.

ounds on which their right to seats are contested have not been fully considered mmittee for want of time, nor will there be sufficient time at this session to

consider them. In the opinion of your committee it would be unjust to those States and gentlemen to keep the latter out of their seats until such investigation can be had.

The committee therefore report the following resolution:

Resolved, That George Goldthwaite and Foster Blodgett be permitted to take seats in this body upon taking the proper oath; and that the Committee on Privileges and Elections proceed hereafter to consider the grounds on which their rights to seats, respectively, are contested, and hereafter make reports to the Senate thereon.

WM. M. STEWART.
O. P. MORTON.
H. HAMLIN.
B. F. RICE.

We concur in the foregoing as to Goldthwaite, but not as to Blodgett.

JOSHUA HILL.
A. G. THURMAN.

WEDNESDAY, *March* 22, 1871.

On motion by Mr. Stewart, the Senate proceeded to consider the resolution reported by the Committee on Privileges and Elections to admit George Goldthwaite and Foster Blodgett to seats in the Senate of the United States as Senators, respectively, from the States of Alabama and Georgia; when

Mr. Thurman called for a division of the question, so that it shall be taken first upon the admission of George Goldthwaite to his seat in the Senate as a Senator from the State of Alabama.

Pending debate,

Ordered, That the further consideration of the said resolution be postponed to to-morrow.

[The debate is found on pages 218, 219 of the Congressional Globe, part 1, 1st sess. 42d Cong.]

SATURDAY, *March* 25, 1871.

On motion by Mr. Stewart, the Senate resumed, &c.

[The debate is found on pages 271–274 of the Congressional Globe, part 1, 1st sess. 42d Cong.]

THURSDAY, *April* 6, 1871.

On motion by Mr. Stewart, the Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to permit George Goldthwaite and Foster Blodgett to take seats in the Senate of the United States, upon taking the proper oaths, as Senators respectively from the States of Alabama and Georgia; and

A division of the question having heretofore been called for by Mr. Thurman, so that a separate vote be taken on the admission of each person named in the resolution,

The Vice-President decided that the question on the resolution was not susceptible of a division, as desired by Mr. Thurman, but that the end desired by him could be attained by amendment.

On motion by Mr. Hill to amend the resolution by striking out the words "and Foster Blodgett,"

After debate,

Ordered, That the further consideration of the resolution be postponed to to-morrow.

[The debate is found on pages 494–498 of the Congressional Globe, part 1, 1st sess. 42d Cong.]

* * * * * * *

On motion by Mr. Stewart, the Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to permit George Goldthwaite and Foster Blodgett to take seats in the Senate of the United States, upon taking the proper oaths, as Senators respectively from the States of Alabama and Georgia.

On motion by Mr. Edmunds, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 506, 507 of the Congressional Globe, part 1, 1st sess. 42d Cong.]

FRIDAY, *April* 7, 1871.

The Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to permit George Goldthwaite and Foster Blodgett to take seats in the Senate of the United States, upon taking the proper oaths, as Senators respectively from the States of Alabama and Georgia; and

The question being on the amendment proposed by Mr. Hill,

On motion by Mr. Anthony, and by unanimous consent, the further consideration was informally passed over.

* * * * * * *

The Senate then again resumed the consideration of the resolution reported by the

Committee on Privileges and Elections to permit George Goldthwaite and Foster Blodgett to take seats in the Senate of the United States, upon taking the proper oaths, as Senators respectively from the States of Alabama and Georgia; and

The question being on the amendment proposed by Mr. Hill to the resolution to strike out the words "and Foster Blodgett,"

On motion by Mr. Edmunds, the Senate proceeded to the consideration of executive business.

[No debate took place.]

MONDAY, *April* 10, 1871.

The Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to permit George Goldthwaite and Foster Blodgett to take seats in the Senate of the United States, upon taking the proper oaths, as Senators respectively from the States of Alabama and Georgia; and

The question being on the amendment proposed by Mr. Hill to the resolution to strike out the words "and Foster Blodgett,"

After debate,

On motion by Mr. Edmunds that the resolution lie on the table, it was determined in the negative—yeas 25, nays 26.

On motion by Mr. Stewart, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Ames, Anthony, Boreman, Buckingham, Carpenter, Chandler, Cole, Conkling, Corbett, Edmunds, Ferry of Michigan, Frelinghuysen, Harlan, Hill, Hitchcock, Howe, Morrill of Vermont, Patterson, Pratt, Sawyer, Scott, Sherman, Tipton, Trumbull, and Windom.

Those who voted in the negative are Messrs. Bayard, Brownlow, Cameron, Casserly, Clayton, Cooper, Cragin, Davis, Gilbert, Hamlin, Johnston, Kelly, Morton, Nye, Osborn, Ramsey, Saulsbury, Schurz, Spencer, Stevenson, Stewart, Stockton, Sumner, Thurman, West, and Wright.

So the motion to lay the resolution on the table was not agreed to; and

Pending further debate,

Mr. Thurman raised a question of order, namely: That in discussing the question before the Senate debate upon the question whether Foster Blodgett or Joshua Hill had or had not committed perjury was not in order.

The Vice-President sustained the point of order raised by Mr. Thurman, and ruled the debate on that question out of order; and

After further debate,

On motion by Mr. Trumbull (at 5 o'clock p. m.), the Senate adjourned.

[The debate which took place, pages 540–558 of the Congressional Globe, part 1, 1st sess. 42d Cong., was wholly on the case of Mr. Blodgett.]

TUESDAY, *April* 11, 1871.

The Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to permit George Goldthwaite and Foster Blodgett to take seats in the Senate of the United States, upon taking the proper oaths, as Senators, re-respectively, from the States of Alabama and Georgia; and

The question being on the amendment proposed by Mr. Hill to the resolution to strike out the words "and Foster Blodgett,"

On motion by Mr. Edmunds that the resolution lie on the table, it was determined in the affirmative—yeas 19, nays 17.

On motion by Mr. Robertson, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Ames, Anthony, Boreman, Carpenter, Chandler, Cole, Conkling, Davis of West Virginia, Edmunds, Harlan, Hill, Kelly, Morrill of Maine, Pratt, Scott, Sherman, Tipton, Wilson, and Wright.

Those who voted in the negative are Messrs. Bayard, Blair, Casserly, Cooper, Davis of Kentucky, Gilbert, Hamilton of Maryland, Hamlin, Johnston, Morton, Rice, Robertson, Saulsbury, Schurz, Stevenson, Stockton, and Wickers.

So the resolution was ordered to lie on the table.

[No debate took place.]

[Second session of the Forty-second Congress.]

THURSDAY, *December* 21, 1871.

Mr. Thurman submitted the following resolution for consideration:

"*Resolved*, That George Goldthwaite be permitted to take a seat in this body as a Senator from the State of Alabama, upon taking the oath, and that the Committee on

Privileges and Elections proceed hereafter to consider the grounds on which his right to a seat is contested, and hereafter make report to the Senate thereon."

[The debate is found on pages 261, 262 of the Congressional Globe, part 1, 2d sess. 42d Cong.]

TUESDAY, *January* 9, 1872.

On motion by Mr. Thurman that the Senate proceed to the consideration of the resolution reported from the Committee on Privileges and Elections on the 20th of March last, to admit George Goldthwaite and Foster Blodgett to seats in the Senate as Senators, respectively, from the States of Alabama and Georgia, it was determined in the affirmative, and the Senate resumed the consideration of the said resolution.

On the question to agree to the resolution, which is in the following words:

"*Resolved*, That George Goldthwaite and Foster Blodgett be permitted to take seats in this body upon taking the proper oath; and that the Committee on Privileges and Elections proceed hereafter to consider the grounds on which their rights to seats, respectively, are contested, and hereafter make reports to the Senate thereon,"

On motion by Mr. Thurman to amend the resolution by striking out all after the word "resolved," and in lieu thereof inserting:

"That George Goldthwaite be permitted to take a seat in this body as a Senator from the State of Alabama upon taking the proper oath; and that the Committee on Privileges and Elections proceed hereafter to consider the grounds on which his right to a seat is contested, and hereafter make report to the Senate thereon,"

It was determined in the affirmative; and

On the question to agree to the resolution as amended, it was determined in the affirmative.

So the resolution as amended was agreed to.

[The debate is found on pages 319, 320 of the Congressional Globe, part 1, 2d sess. 42d Cong.]

MONDAY, *January* 15, 1872.

Mr. George Goldthwaite, from the State of Alabama, attended, and the oaths prescribed by law were administered to him by the Vice-President, and he took his seat in the Senate.

), 1871, the credentials of Mr. Blodgett, elected for the term beginning March 4, 1871, were March 2, a memorial of members of the last general assembly of Georgia, remonstrat- his admission to a seat in the Senate, was presented. March 13, the credentials and ere referred to the Committee on Privileges and Elections. March 20, the committee t there would not be time at that session of Congress fully to consider the grounds upon ght to a seat was contested, and reported a resolution that he be permitted to take his it the committee proceed thereafter to consider the grounds of the remonstrance and Senate thereon. This report and resolution included the case of George Goldthwaite,

After debate it was ordered that the resolution lie on the table. December 4, 1871, in sion of Congress, the credentials of Mr. Norwood, elected for the same term, were pre- ecember 11, they were referred to the Committee on Privileges and Elections. Decem- mmittee reported in favor of Mr. Norwood. It appears that the legislature electing was elected in April, 1868. By the laws of Georgia then in force it was provided that slature should be elected in November, 1870, and should meet and organize in January, gislature electing Mr. Blodgett, subsequently to his election, provided by law that the which was to be elected in November, 1870, and organized in January, 1871, should not until December, 1870, and should not meet and organize until November, 1871. This sec- ure was the one electing Mr. Norwood. The question to be decided was, which was re "chosen next preceding the expiration of the time for which any Senator was present said State in Congress?" (Act of July 25, 1866.) It was claimed by Mr. Blodg- n and *elected* mean different things; that the legislators are elected by the people, but slature is not chosen until the members elected assemble and organize as a legislature; slature electing Mr. Norwood did not assemble until after March 4, 1871, and so could e "chosen next preceding the expiration," &c. The committee reported that the mean- t referred to was that "the legislature whose members should be elected next preced- ration of the Senatorial term should elect the successor"; that the words *chosen* and synonymous. They reported a resolution that Mr. Norwood was entitled to the seat, greed to December 19, and Mr. Norwood took the oath of office.

ett was allowed compensation and mileage.

y of the case here given consists of a transcript of the proceedings of the Senate relating nate Journals, 3d sess. 41st Cong., and 1st and 2d sess. 42d Cong., and the reports of the rom Senate Reports, 42d Cong., 1st sess., No. 3, and 42d Cong., 2d sess., vol. 1, No. 10. erences to the debates of each day are inserted below.

[Third session of the Forty-first Congress.]

FRIDAY, *January* 20, 1871.

ton presented the credentials of Mr. Foster Blodgett, elected a Senator from f Georgia for the term of six years commencing on the 4th day of March, 1871. entials were read.

That they lie on the table.

THURSDAY, *March* 2, 1871.

presented a memorial of members of the last general assembly of the State of monstrating against the admission of Foster Blodgett to a seat in the Senate ed States.

That it lie on the table.

in the Senate of the United States as a Senator from that State be referred to th
mittee on Privileges and Elections.

MONDAY, *March* 20, 1

Mr. Stewart, from the Committee on Privileges and Elections, to whom were r
the credentials of Foster Blodgett, with the memorial of members of the legisla
the State of Georgia, protesting against the admission of said Blodgett to a seat
Senate of the United States as a Senator from that State, and the credentials of
Goldthwaite, with the protest of sundry members of the legislature of the State
bama against the election of said Goldthwaite, submitted a report (No. 3) there
companied by the following resolution:

"*Resolved*, That George Goldthwaite and Foster Blodgett be permitted to take
this body upon taking the proper oath; and that the Committee on Privileges an
tions proceed hereafter to consider the grounds on which their rights to seats, r
ively, are contested, and hereafter make reports to the Senate thereon."

Mr. Hill presented a brief* of the memorial of members of the legislature of th
of Georgia, protesting against the admission of Foster Blodgett to a seat in the Se
the United States as a Senator from that State.

Ordered, That it lie on the table and be printed.

REPORT OF COMMITTEE.

IN THE SENATE OF THE UNITED STATES.

MARCH 20, 1871.—Ordered to be printed.

Mr. Stewart, from the Committee on Privileges and Elections, submitted the
ing report:

The Committee on Privileges and Elections, to whom were referred the credent
George Goldthwaite, claiming a seat in this body as a Senator from the State of Al
and the credentials of Foster Blodgett, claiming a seat in this body as a Senator fr
State of Georgia, report:

That said credentials are in due form, and *prima facie* entitle said Goldthwai
Blodgett to their seats upon taking the oath prescribed by the Constitution and
neither of them being under any disability.

The grounds on which their rights to seats are contested have not been fully cons
by the committee for want of time, nor will there be sufficient time at this ses
consider them. In the opinion of your committee it would be unjust to those
and gentlemen to keep the latter out of their seats until such investigation can b

The committee therefore report the following resolution:

Resolved, That George Goldthwaite and Foster Blodgett be permitted to take s
this body upon taking the proper oath; and that the Committee on Privileges and
tions proceed hereafter to consider the grounds on which their rights to seats, r
ively, are contested, and hereafter make reports to the Senate thereon.

WM. M. STEWA
O. P. MORTON.
H. HAMLIN.
B. F. RICE.

We concur in the foregoing as to Goldthwaite, but not as to Blodgett.

JOSHUA HILI
A. G. THURM

TUESDAY, *March* 21, 1

Mr. Hill presented the memorial† of John E. Bryant, of Georgia, remons
against the admission of Foster Blodgett to a seat in the Senate as a Senator fro
State of Georgia.

Ordered, That it lie on the table and be printed.

WEDNESDAY, *March* 22, 1

On motion by Mr. Stewart, the Senate proceeded to consider the resolution re
by the Committee on Privileges and Elections to admit George Goldthwaite and
Blodgett to seats in the Senate of the United States as Senators, respectively, fro
States of Alabama and Georgia; when

* Found in Senate Miscellaneous, 1st sess. 42d Cong., No. 24.
† Found in Senate Miscellaneous, 1st sess. 42d Cong., No. 30.

Mr. Thurman called for a division of the question, so that it shall be taken first upon the admission of George Goldthwaite to his seat in the Senate as a Senator from the State of Alabama.

Pending debate,

Ordered, That the further consideration of the said resolution be postponed to to-morrow.

[The debate is found on pages 218, 219 of the Congressional Globe, part 1, 1st sess. 42d Cong.]

SATURDAY, *March* 25, 1871.

On motion by Mr. Stewart, the Senate resumed, &c.

[The debate is found on pages 271–274 of the Congressional Globe, part 1, 1st sess. 42d Cong.]

THURSDAY, *April* 6, 1871.

On motion by Mr. Stewart, the Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to permit George Goldthwaite and Foster Blodgett to take seats in the Senate of the United States, upon taking the proper oaths, as Senators, respectively, from the States of Alabama and Georgia; and

A division of the question having heretofore been called for by Mr. Thurman, so that a separate vote be taken on the admission of each person named in the resolution,

The Vice-President decided that the question on the resolution was not susceptible of a division, as desired by Mr. Thurman, but that the end desired by him could be attained by amendment.

On motion by Mr. Hill to amend the resolution by striking out the words "and Foster Blodgett,"

After debate,

Ordered, That the further consideration of the resolution be postponed to to-morrow.

[The debate is found on pages 494–498 of the Congressional Globe, part 1, 1st sess. 42d Cong.]

* * * * * * *

On motion by Mr. Stewart, the Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to permit George Goldthwaite and Foster Blodgett to take seats in the Senate of the United States, upon taking the proper oaths, as Senators, respectively, from the States of Alabama and Georgia.

On motion by Mr. Edmunds, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 506, 507 of the Congressional Globe, part 1, 1st sess. 42d Cong.]

FRIDAY, *April* 7, 1871.

The Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to permit George Goldthwaite and Foster Blodgett to take seats in the Senate of the United States, upon taking the proper oaths, as Senators, respectively, from the States of Alabama and Georgia; and

The question being on the amendment proposed by Mr. Hill,

On motion by Mr. Anthony, and by unanimous consent, the further consideration was informally passed over.

* * * * * * *

The Senate then again resumed the consideration of the resolution reported by the Committee on Privileges and Elections to permit George Goldthwaite and Foster Blodgett to take seats in the Senate of the United States, upon taking the proper oaths, as Senators, respectively, from the States of Alabama and Georgia; and

The question being on the amendment proposed by Mr. Hill to the resolution to strike out the words "and Foster Blodgett,"

On motion by Mr. Edmunds, the Senate proceeded to the consideration of executive business.

[No debate took place.]

MONDAY, *April* 10, 1871.

The Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to permit George Goldthwaite and Foster Blodgett to take seats in the Senate of the United States, upon taking the proper oaths, as Senators, respectively, from the States of Alabama and Georgia; and

The question being on the amendment proposed by Mr. Hill to the resolution to strike out the words "and Foster Blodgett,"

After debate,

On motion by Mr. Edmunds that the resolution lie on the table, it was de in the negative—yeas 25, nays 26.

On motion by Mr. Stewart, the yeas and nays being desired by one-fifth of the present,

Those who voted in the affirmative are Messrs. Ames, Anthony, Boreman, ham, Carpenter, Chandler, Cole, Conkling, Corbett, Edmunds, Ferry of Michi linghuysen, Harlan, Hill, Hitchcock, Howe, Morrill of Vermont, Patterson, Pr yer, Scott, Sherman, Tipton, Trumbull, and Windom.

Those who voted in the negative are Messrs. Bayard, Brownlow, Cameron, Clayton, Cooper, Cragin, Davis, Gilbert, Hamlin, Johnston, Kelly, Morton, Nye Ramsey, Saulsbury, Schurz, Spencer, Stevenson, Stewart, Stockton, Sumner, T West, and Wright.

So the motion to lay the resolution on the table was not agreed to; and

Pending further debate,

Mr. Thurman raised a question of order, viz: That in discussing the questi the Senate debate upon the question whether Foster Blodgett or Joshua Hil had not committed perjury was not in order.

The Vice-President sustained the point of order raised by Mr. Thurman, a the debate on that question out of order; and

After further debate,

On motion by Mr. Trumbull (at 5 o'clock p. m.), the Senate adjourned.

[The debate, which was wholly on the credentials of Mr. Blodgett, is found 540–558 of the Congressional Globe, part 1, 1st sess. 42d Cong.]

TUESDAY, *April* 11

The Senate resumed the consideration of the resolution reported by the C on Privileges and Elections, to permit George Goldthwaite and Foster Blodget seats in the Senate of the United States, upon taking the proper oaths, as Sen spectively, from the States of Alabama and Georgia; and

The question being on the amendment proposed by Mr. Hill to the resolution out the words "and Foster Blodgett,"

On motion by Mr. Edmunds that the resolution lie on the table, it was deter the affirmative—yeas 19, nays 17.

On motion by Mr. Robertson, the yeas and nays being desired by one-fifth of ters present,

Those who voted in the affirmative are Messrs. Ames, Anthony, Boreman, C Chandler, Cole, Conkling, Davis of West Virginia, Edmunds, Harlan, Hill, K rill of Maine, Pratt, Scott, Sherman, Tipton, Wilson, and Wright.

Those who voted in the negative are Messrs. Bayard, Blair, Casserly, Coop Kentucky, Gilbert, Hamilton of Maryland, Hamlin, Johnston, Morton, Rice, Saulsbury, Schurz, Stevenson, Stockton, and Vickers.

So the resolution was ordered to lie on the table.

[No debate took place.]

[Second session of the Forty-second Congress.]

MONDAY, *Dece*

Mr. Thurman presented the credentials of Thomas M. Norwood, elect the general assembly of the State of Georgia for the term of six years com 4, 1871; which were read.

Ordered, That they lie on the table.

MONDAY, *Dec*

On motion by Mr. Thurman,

Ordered, That the credentials of Thomas M. Norwood, claiming a s as a Senator from the State of Georgia, be referred to the Committee Elections.

MONDAY, *D*

Mr. Carpenter, from the Committee on Privileges and Elections, ferred the credentials of Thomas M. Norwood, claiming a seat in the from the State of Georgia, submitted a report (No. 10) thereon, acco lowing resolution. (Resolution found at end of report.)

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Morton (chairman), Rice, Carpenter, Logan, Hill, Thurman, and Anthony.]

IN THE SENATE OF THE UNITED STATES.

DECEMBER 18, 1871.—Ordered to be printed.

Mr. Carpenter, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom were referred the credentials of Foster Blodgett and Thomas M. Norwood, each claiming a seat as Senator from the State of Georgia for the term which commenced March 4, 1871, respectfully submit the following report:

The Senate being a branch of the Government of the United States, the right to elect a Senator is conferred and its exercise regulated by the Constitution of the United States, and no law or regulation of a State touching such election has any validity beyond the authority conferred upon the State by the Constitution of the United States.

The Constitution, Article I, section 3, provides that Senators shall be chosen by the legislatures of the respective States. Section 4 of the same article provides:

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the *places* of choosing Senators."

The first clause of this section commits to the legislatures of the States primarily the whole subject of electing Senators and Representatives, and authorizes them to make such regulations upon the subject as they may deem proper. The phrase "the times, places, and manner of holding such elections for Senators and Representatives" embraces the whole subject of election of Senator except that the election must be made by the legislature of the State, as provided in the third section. The legislature may therefore provide that a Senator shall be elected by the legislature to be chosen next before the expiration of a term or next after its commencement. The second clause, quoted from the fourth section, confers upon Congress the same power and absolute control over the subject, to be exercised in the discretion of Congress, except that Congress cannot fix a place for holding the election different from that fixed by the State legislature.

In the exercise of this undoubted constitutional power Congress passed an act regulating the election of Senators, approved July 25, 1866 (14 Stat. at Large, page 243), which provides:

"The legislature of each State which shall be chosen next preceding the expiration of the time for which any Senator was elected to represent said State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress in place of such Senator so going out of office."

Foster Blodgett claims to have been elected on the 15th day of February, A. D. 1870, by the legislature then existing and in session. He received the requisite number of votes, and his credentials are in due form. The question, therefore, is whether it was competent for that legislature to elect a Senator to serve during the term before mentioned. If this question can be answered in the affirmative, Mr. Blodgett is entitled to the seat; if not, his pretended election was an absolute nullity. The answer to this question depends upon the true construction of the act of Congress before quoted. It is claimed by Mr. Blodgett that *chosen* and *elected* mean different things; that legislators are elected by the people, but that legislators are not the legislature, and that the legislature is not chosen until the members elected assemble as provided by law and organize as a legislature by determining what persons elected or claiming to be elected are entitled to seats. That is, the people elect the legislators, and the legislators after their election choose the legislature, and hence the legislature which was in fact organized next preceding the expiration of the term of office is the one authorized to elect a successor without regard to the time when the members of such legislature were elected by the people.

This refinement of reasoning does not meet the approbation of your committee. The question is, what was the intention of Congress in passing this act? The legislature designated by the act is the one "which shall be chosen next preceding the expiration of the time," &c. There is no such thing as choosing a legislature except by choosing its members. The Constitution declares that Senators shall be elected by the legislature of each State. Hence the act of Congress employs the same phrase. But your committee cannot doubt that it was the intention of Congress to provide that the legislature whose members should be elected next *preceding the* expiration of the Senatorial term should

elect the successor. The distinction sought to be established between the words *elected* and *chosen* derives no support from popular or legal lexicography. Elected is defined *chosen* and chosen is defined *elected*, and the words are used as synonymous in the Constitution of the United States, the constitution of every State, in all our statutes, and in all popular literature. It is a universal rule of construction, applicable to constitutions and statutes, that words are to be understood in their popular, commonly received meaning, and to force upon this statute so unnatural a construction would defeat the intention of Congress, manifest in the act itself, and violate the fundamental principle of free government which doubtless inspired the passage of the act.

The legislature which was in session on the 15th day of February, 1870, when Mr. Blodgett claims to have been elected, was chosen in April, 1868. By the constitution and laws of Georgia then in force it was provided that another legislature should be elected on Tuesday after the first Monday in November, 1870, and that the legislature so to be elected should meet and organize on the second Wednesday in January, 1871. Thus it will be seen that at the time Mr. Blodgett claims to have been elected there was to be another legislature elected and organized prior to the expiration of the term for which Mr. Blodgett claims to have been elected to serve. Therefore, as the case then stood, the action of that legislature in the premises was without authority and directly in contravention of the act of Congress upon that subject. It is not claimed that Mr. Blodgett was elected at any other time or by any other legislature. The validity of his election must depend upon the state of case then existing. If the legislature had no authority to elect him at that time, their pretending to do so conferred upon him no right to claim this seat. If he has any rights they vested by that election, and were perfect as soon as the election was completed. His election was either valid or void; if valid, no subsequent action of the legislature could impair his rights; if void, no subsequent action of the legislature, short of another election, could entitle him to this seat.

Subsequently to Mr. Blodgett's pretended election the legislature provided by law, as it was authorized to do by the constitution of the State, that the legislature which was to be elected in November, 1870, and organized in January, 1871, as required by law at the time of Blodgett's pretended election, should not be elected until December, 1870, and should not convene and organize until November, 1871. But if your committee are right in their construction of the act of Congress, the legislature which convened in November, 1871, was the legislature chosen next preceding the expiration of the Senatorial term, and, consequently, that legislature was the one which was authorized to elect the successor; and this legislature did, in fact, elect Mr. Norwood. The fact that the State for months after the expiration of the former term, March 4, 1871, was without full representation in the Senate is not the fault of the act of Congress. The legislature authorized under the act of Congress to make this election would have been elected in November, 1870, and convened in January, 1871, and might have elected a Senator prior to the expiration of the former term but for the action of the State in postponing the election and organization of the legislature authorized to elect the successor. The State cannot complain of its own act, nor ask the Senate to disregard the act of Congress, because the State has intentionally omitted to comply with the act of Congress and avail itself of its provisions.

Therefore, Mr. Norwood having been duly elected at the first session of the legislature which was chosen prior to the expiration of the former term, your committee respectfully recommend the adoption of the following resolution:

Resolved, That Thomas M. Norwood is entitled to a seat in the Senate as a Senator from the State of Georgia for the term commencing March 4, 1871, and that he be admitted to the same.

TUESDAY, *December* 19, 1871.

The Senate proceeded to consider the resolution reported from the Committee on the Judiciary, to admit Thomas M. Norwood to a seat in the Senate as a Senator from the State of Georgia; and,

On the question to agree thereto, it was determined in the affirmative.

So it was

Resolved, That Thomas M. Norwood is entitled to a seat in the Senate, as a Senator from the State of Georgia, for the term commencing March 4, 1871, and that he be admitted to the same.

Whereupon

Mr. Norwood appeared, and the oaths prescribed by law having been administered to him by the Vice-President, he took his seat in the Senate.

COMPENSATION OF MR. BLODGETT.

Mr. Morton submitted the following resolution for consideration:

"*Resolved*, That the Secretary of the Senate be directed to pay, out of the pay and mileage account, to Foster Blodgett, claiming a seat as Senator-elect from the State of

Georgia, the pay and mileage of a Senator, commencing March 4, 1871, to the passage of this resolution."

TUESDAY, *January* 9, 1872.

On motion by Mr. Morton that the Senate proceed to the consideration of the resolution submitted by him on the 19th December last, to pay Foster Blodgett the pay and mileage of a Senator for the period therein named, it was determined in the affirmative; and

Mr. Morton having modified the said resolution,

After debate,

On the question to agree to the resolution, in the following words:

"*Resolved*, That the Secretary of the Senate be directed to pay, out of the pay and mileage account, to Foster Blodgett, claiming a seat as Senator-elect from the State of Georgia, the pay and mileage of a Senator from March 4, 1871, to the 19th of December, 1871, when the question of his right to his seat was determined by the Senate,"

It was determined in the affirmative.

So the resolution as modified was agreed to.

[Forty-second Congress—Second session.]

MATT W. RANSOM vs. JOSEPH C. ABBOTT,

of North Carolina.

Mr. Abbott's term expired March 3, 1871. March 7, a memorial of Mr. Abbott was present ing that he had been legally elected for the succeeding term. March 13, the memorial wa to the Committee on Privileges and Elections. February 28, 1872, the committee reported a At the election held in November, 1870, Zebulon B. Vance received "a majority of the wh ber of votes cast in each house," and Mr. Abbott received the next highest number of vote day following the election Mr. Vance was declared duly elected. Mr. Vance at the date o tion was under the political disabilities imposed by the fourteenth amendment of the Con Mr. Abbott rested his claim on what he assumed to be the legal result of the conceded in of Mr. Vance. He assumed that it was a conclusion of law that if the candidate receiving th number of votes was ineligible, and that ineligibility was known to the electors, the votes him were void, and should be considered mere nullities, and, consequently, that the can ceiving the next highest number of votes was elected. The committee were of opinion t that might be the English rule, it was directly at variance with our theory of government; the English rule was not applicable in this case for the reason also that the amendment the disabilities also provided for the removal of them by Congress, and that consequently tion of Mr. Vance was not void but voidable only; that the removals of these disabilities afte in several previous cases by acts of Congress were decisions that such votes were not mere The committee were furthermore of opinion that the facts in this case would not bring it w English rule, supposing it to be admitted that that rule was applicable here. The committ mended the adoption of a resolution that Mr. Abbott, not having received a majority of cast, was not entitled to a seat. There was a minority report in support of Mr. Abbot April 23, 1872, the Senate agreed to the resolution reported by the committee.

The credentials of Mr. Vance were not presented, and no claim was made to the seat by

February 5, 1872, pending the action of the committee on Mr. Abbott's memorial, the cred Mr. Ransom were presented and referred to the committee. They certified that he had bee January 30, 1872, to fill a vacancy existing by reason of the resignation of Zebulon B. Vanc 24, the day after the Senate resolved that Mr. Abbott was not entitled to the seat, the c reported that Mr. Ransom's credentials appeared to be in due form, and recommended t admitted to his seat. He was admitted the same day.

The Senate resolved that Mr. Abbott be allowed compensation, and that Mr. Ransom's mence on the first day of the term.*

The history of the case here given consists of a transcript of the proceedings of the Senat to it from Senate Journals, 42d Cong., 1st and 2d sess., and the report of the committee fro Reports, 2d sess. 42d Cong., No. 58.

Special references to the debates of each day, which are found in the Congressional Glob 42d Cong., part 3, and in the Appendix, are inserted below.

[First session of the Forty-second Congress.]

TUESDAY, *March* 7,

Mr. Pool presented the memorial† of Joseph C. Abbott, claiming to have bee elected a Senator of the United States by the legislature of the State of North for the term of six years commencing on the 4th day of March, 1871.

Ordered, That it lie on the table and be printed.

MONDAY, *March* 13,

On motion by Mr. Pool,

Ordered, That the memorial of Joseph C. Abbott, claiming to be duly elected tor of the United States by the legal votes of the members of the legislature of t of North Carolina, for the term of six years commencing on the 4th day of Marc be referred to the Committee on Privileges and Elections.

[Second session of the Forty-second Congress.]

WEDNESDAY, *February* 28,

Mr. Logan, from the Committee on Privileges and Elections, to whom was the memorial of Joseph C. Abbott, claiming a seat in the Senate as a Senator State of North Carolina, submitted a report (No. 58), accompanied by the f resolution:

"*Resolved*, That Joseph C. Abbott, not having received a majority of the vote

* The Senate passed a similar resolution June 8, 1872, in regard to the pay of George V Maryland, who was elected March 7, 1868, for the term beginning March 4, 1867. Philip F. had been elected for this term and was not admitted. For report on Mr. Vickers's pay, *No. 231, 42d Cong., 2d sess.*

† *The memorial* is found in Senate Miscellaneous, 1st sess. 42d Cong., No. 1.

the North Carolina legislature on the second Tuesday in November, 1870, for the office of Senator of the United States, is not entitled to a seat in said United States Senate as such Senator."

Mr. Carpenter asked and obtained leave to present the views of the minority of the committee on the memorial of Mr. Abbott; which were ordered to be printed, to accompany the foregoing report.

REPORT OF COMMITTEE, AND VIEWS OF MINORITY.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1872.—Ordered to be printed.

Mr. Logan, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom was referred the memorial of Joseph C. Abbott, claiming to be entitled to a seat in this body as a Senator from North Carolina, for the term commencing on the 4th day of March, A. D. 1871, respectfully submit the following report:

Article I, section 5, of the Constitution of the United States provides that—

"Each House shall be the judge of the elections, returns, and qualifications of its own members."

The duty which devolves upon the Senate in deciding cases that arise under this clause of the Constitution is in the nature of a judicial proceeding, and the cases must be decided upon the evidence presented, and in accordance with legal principles, as established by former parliamentary and judicial precedents and decisions.

The only evidence which is before the committee in relation to the claim of the memorialist Abbott to a seat in the Senate of the United States is as follows:

That, on the second Tuesday of November, 1870, the day prescribed by law, the two houses of the legislature of North Carolina proceeded to the election of a Senator from that State for the term of six years commencing on the 4th day of March, 1871, with the following results:

In the house of representatives:

	Votes.
Zebulon B. Vance received	63
Joseph C. Abbott received	32
Scattering	10
Members present	105

In the senate:

Zebulon B. Vance received	32
Joseph C. Abbott received	11
Scattering	5
Members present	48

That the number of members present at the time and so voting constituted a quorum of each house of the legislature; the constitution of North Carolina providing that "neither house shall proceed upon public business unless a majority of all the members are actually present," the numbers so present amounting to a majority of all the members.

On the following day the two houses, in the usual form, declared that Vance had received a majority of the votes cast in both houses, and that he was duly elected as such Senator for said term of six years commencing on the 4th day of March, 1871.

It is also further in evidence that said Vance was not on said second Tuesday of November, 1870, and at no time since has been, qualified to serve as such Senator, owing to disability imposed by the fourteenth article of amendment of the Constitution.

It is averred that the members of the legislature of North Carolina so voting for Vance, at the time their votes were cast, had notice of the ineligibility of Vance, but no evidence on this point has been presented to the committee, the memorialist relying upon the assumption that this was a matter of public notoriety.

It appears, therefore, that Abbott rests his claim to the seat solely upon what he assumes to be the legal result of the conceded ineligibility of Vance, who, although receiving a majority of the votes, is not entitled to take the oath of office or hold the seat. He assumes that it is a conclusion of law that if the candidate who has received the highest number of votes is ineligible, and that ineligibility was known to those who voted for him before casting their votes, that the *votes so cast* for him are void, and should be

considered as nullities, and as though they never had been cast; and, consequently, tu candidate receiving the next highest number of votes is elected.

In support of this view of the case the memorialist has called the attention of the con mittee to a large number of English authorities bearing on this question. While tl committee make no question as to the general tenor of the decisions to which attentic has been called, yet it is evident that these are based upon a very different rule fro that adopted in our country. To show that this rule is different, the committee woul refer to the following authorities, which are cited in the very able report of Mr. Daw from the Committee on Elections, in the case of Smith *vs.* J. Y. Brown (Report of Con mittees, No. 11, 2d sess. 40th Cong.).

Haywood on County Elections, 535:

"If, before the election comes on, or a majority has polled, sufficient notice has bee publicly given of his ineligibility, the unsuccessful candidate next to him on the po must ultimately be the sitting member."

Male on Elections, 336:

"If an election is made of a person or persons ineligible, such election is void, whe the ineligibility is clear and pointed out to the electors at the poll."

In the case of King *vs.* Hawkins (10 East., 210), Lord Ellenborough states that such the law in England, "after notice of ineligibility."

In the case of Claridge *vs.* Evelyn (5 B. and A., 8), Abbott, C. J., remarks:

"I am of the opinion, therefore, that he (the infant) was ineligible, and due notice his incapacity having been given to the electors at the time of the election, their vot are thrown away."

Clerke on Election Committees, 156:

"Whenever a candidate is disqualified from sitting in Parliament, and notice there is publicly given to the electors, all votes given to such disqualified candidate will b considered as thrown away."

This notice, in order to bring the case within the rule, was required to be strictl formal, and was generally given at the polls. And the reason for this is apparent, as b their theory a voter who, after due notice of the ineligibility of a candidate, persisted i voting for him, was deemed guilty of a crime. Therefore, as all crimes are committe with an intention to commit the offense, it was necessary that the knowledge of the fac by the voter should be clear.

Roe on Elections, 256:

"It will be seen that the latter proposition is that which constitutes the law in case where misapplication of the franchise by the electors was willful, and therefore made i their own wrong."

But is such a principle applicable in a government based upon the theory that power emanates from the people? In the British Government the case is exactly reverse, as there the theory is that the power originates with the monarch, and the pr leges allowed the people to select representatives are, under that theory, considered as ceded and not as inherent rights. But this Government rests upon an entirely diffe basis. Here the power originates with the people, and that which the Government thorized to exercise is conceded by the people. The right to designate who shall exe this power has never been delegated. The method by which this choice shall be known consistent with this theory can never be otherwise than by giving the ma or plurality the right to decide. Any attempt to restrict the right of the voter attempt to invade that right; therefore the theory that casting a vote knowingly ineligible candidate is in the nature of a crime which may be punished by ig the act of the majority and recognizing the act of the minority is in direct confli that most sacred right which the people of this Government have always guard jealous care. Such a rule is consistent with the theory of the British Governme affords one means of preventing the power from passing into the hands of the but it is directly at variance with the theory of our Government, as it affords o by which that right which the people have of selecting their representatives abridged.

While, therefore, the general tenor of the English authorities to which he re admitted to be as claimed by the memorialist, yet we do not conceive such a applicable to and consistent with the political institutions of the United Sta the right of the majority to govern and the Government is based upon the the governed is one of the first political lessons to be learned.

There is also another very strong reason why the English authorities relie the memorialist are not applicable in the present case, even if the spirit mental idea of our institutions were insufficient to show this.

The third section of the fourteenth amendment of the Constitution, which disabilities in question, also contemplates and provides for the removal the gress. There is no such feature in the English law. The English cases

based upon a very different state of facts from those that exist in this country, and are not precedents for this case.

It is difficult to conceive how the Constitution could grant authority to Congress to remove the disabilities under which an individual who has been elected is laboring, and allow him to take his seat as a member, and yet at the same time embrace the idea that such an election is wholly void and the votes cast for him nullities. Yet Congress by its action in numerous instances has given the first construction to this clause of the Constitution, and if the memorialist in this case shall be admitted to his seat the Senate will have to give the second construction.

The English law in question does not obtain in the United States, as is clearly shown from the following considerations:

First. The judicial decisions are against it, there being but one decision which sustains it, namely, the Indiana case of 14 Ind., page 927; while on the other hand are the decisions in Maine, New Jersey, Pennsylvania, Wisconsin, and California, to which your committee would refer, and from which the following quotations are made:

1795. The State *vs.* Anderson (1 Cox, N. J. Rep., 318):

"Anderson was elected sheriff of Hunterdon. He had not been three years a freeholder, and was therefore absolutely disqualified, the statute of 1788 having declared that no person shall hereafter be eligible to the office of sheriff in any county in this State unless he shall be and hath been an inhabitant thereof and possessing a freehold estate in his own right in fee-simple in the same county for three years previous to his election."—(324.)

Held by the court—

"That Anderson was disqualified, but that his election was not void. The election of an unqualified person as sheriff is not *ipso facto* void; it is only voidable.—(Syllabus, 318). Still, however, we think the election not *ipso facto* void."—(Opinion, 327.)

1849. State *vs.* Giles, *ex rel.* Dunning, &c. (1 Chand., Wis. Rep., 112):

"Two questions arose in this case:

"First. Whether the person holding the office of sheriff at the time of the adoption of the constitution was eligible to that office at the next ensuing election.

"Second. If the then sheriff was ineligible, whether the person who at that election received the next highest number of votes could be considered as entitled to the office.—(13.)

"'The mere ineligibility of a person to hold a particular office, and who receives the greatest number of votes, such votes are not a mere nullity, but should be counted by the canvassers. A contestant for the same office, and receiving a lesser number of votes, though eligible, cannot be regarded as elected, and does not thereby become invested with the right to the office.'—(Syllabus, 112.)

"It is proper to say that we are all of the opinion that the mere ineligibility of a candidate does not, as the law now is, render void the votes cast for him; that such votes should not be rejected, but should be counted by the canvassers, and that in the event of such ineligible person having the highest number of votes, the person having the next highest number is not thereby elected. If any public embarrassment is apprehended from this, such as that an office may remain indefinitely vacant by reason of a majority of the electors obstinately persisting in voting for an ineligible person, it is within the undoubted power of the legislature to prevent it by enacting that all such votes shall be deemed void and not be counted."—(Opinion, 117.)

And this remedy is so reasonable and practical that we may well ask, if it is intended that the English rule shall prevail in this country, why has it not been resorted to? Our answer is that such an idea is contrary to the spirit of our institutions and opposed to the principle that all power granted is by the consent of the governed. When we decide that a minority of votes may elect we strike a blow at the very heart of this republican principle.

1855. 38 Maine Rep., 597:

A majority of the votes at the election in Sagadahoc County were cast for Abel C. Dinslow for county commissioner. There was no such person in being. The governor submitted to the judges the question whether it was competent "to throw out the votes for Abel C. Dinslow and issue a new commission to such person who is eligible to said office as shall appear to have the highest number of votes?"

The judges answered in the negative.

They were further asked whether the office was vacant.

The judges answered it was.

1861. State *ex rel.* Off. *vs.* Smith (14 Wis., 497):

"The remaining questions are: First. Whether the defendant, being an alien and not a qualified elector at the time of his election, was eligible to the office. Second. If he was ineligible, whether the relator, who received the next highest number of votes cast is entitled to the office.

"The last question has been already settled in this State by the case of the State *vs.* Giles (1 Chand., 112.) It was there held by the unanimous judgment of the court that in the absence of a statute declaring it so, the mere ineligibility of a candidate does not render void the votes cast for him; that such votes should not be rejected, but should be counted by the canvassers; and that in the event of such ineligible person having the highest number of votes, the person having the next highest number would not be thereby elected."—(Opinion, 498.)

1867. Commonwealth *vs.* Cluley (56 Penna., 270):

"The votes cast at an election for a person who is disqualified from holding an office are not nullities. They cannot be rejected by the inspectors, or thrown out of the count by the return judges. The disqualified person is a person still, and every vote thrown for him is formal. Even in England it has been held that votes for a disqualified person are not lost or thrown away so as to justify the presiding officers in returning as elected another candidate having a less number of votes, and if they do so a *quo warranto* information will be granted against the person so declared to be elected, on his accepting the office. (See Cole on Quo Warranto, 141-2; Regina *vs.* Hiorns, 7 Ad. & E., 960; 3 Nev. & Perry, 184; Rex *vs.* Bridge, 1 M. & S., 76.) Under institutions such as ours are there is even greater reason for holding that a minority candidate is not entitled to the office if he who received the largest number is disqualified. We are not informed that there has been any decision strictly judicial upon the subject, but in our legislative bodies the question has been determined. It was determined against a minority candidate in the legislature of Kentucky, in a case in which Mr. Clay made an elaborate report and was sustained. In 1793 Albert Gallatin, elected a Senator from this State, was declared by the Senate of the United States disqualified because he had not been a citizen of the United States nine years, and his election was declared void for that reason, but his seat was not given to his competitor. Nobody supposed the minority candidate was elected. There have been several other cases of contested elections in which the successful candidates were decided to have been disqualified, and denied their offices. John Bailey's case is one of them. He was elected to Congress from Massachusetts, and refused his seat in 1824. But neither in his case, nor in any other with which we are acquainted, were the votes given to the successful candidate treated as nullities, so as to entitle one who had received a less number of votes to the office. There is a class of cases in England apparently, but not really, asserting otherwise."—(Opinion of the court by Strong, J.)

This able opinion by Judge Strong, now on the Supreme Bench of the United States, is well worth careful consideration. Your committee would call special attention to that sentence where it is stated that "the disqualified person is a person still, and every vote thrown for him is formal." The act of Congress prescribing the time and manner of electing Senators specifies what the vote shall be for in order to make it available in the count; for it says "each house shall openly, by a *viva voce* vote of each member present, name one person for Senator." The vote must be for a person, not a blank in fact, not for a myth, but for a person. But if the vote is cast for a person for Senator in Congress from that State, this statute has been formally complied with, and no construction can change the fact. Vance is a person; 63 *viva voce* votes in the House and 32 *viva voce* votes in the Senate were given for him for Senator in Congress from North Carolina on the day and at the place required. Then the provisions of the act of July 25, 1866, have been strictly and formally complied with. What power, then, has the Senate of the United States, or any court, to declare these votes were never cast for a person? For this, it seems to your committee, must be said before the memorialist could be entitled to the seat he claims. But even this conclusion must result in a decision adverse to his claim; for if these votes are declared nullities, then no quorum voted. (Also Saunders *vs.* Hayes, 13 Col., pages 145, 156; 10 Col., Whitman *vs.* Maloney.)

Secondly. The legislative decisions are against the idea that the English law obtains in this country. So far as any action has been taken in the Senate which bears upon the question, it has been decidedly against the English law.

In the case of Mr. Gallatin, from Pennsylvania, in 1793, although deciding him to be ineligible and his election void, yet, by resolution, the governor of that Commonwealth was simply notified of this action.—(Cont. El., 3d Cong., 1st sess., page 859.)

The case of Mr. Shields, of Illinois.—(Cont. El. Cong., from 1834 to 1865, page 606.)

The case of Yulee *vs.* Mallory, of Florida, where blank votes were taken into the count.—(Cont. El., page 608, 32d Cong.)

The cases of Mr. Thomas, of Maryland, and Miller, of Georgia, where the oath of office was modified, is a declaration on the part of the Senate of the American rule.

In the House of Representatives the same rule has so far prevailed.

The case of Mr. Bailey, of Massachusetts, 1824, where the candidate receiving the highest vote was declared ineligible, yet the votes given to him, as Judge Strong remarks in the case of Cluley, "were not treated as nullities."—(Cont. El. from 1789 to 1834, page 254.)

The case of Smith *vs.* J. Y. Brown, 1868, where the present question is ably discussed in the report by Mr. Dawes from the Committee on Elections, and it is decided that a minority cannot elect.—(Cont. El. from 1865 to 1871, page 395.)

In the case of McKee *vs.* J. D. Young, 1868, although the claim of the contestant was decided on other grounds, yet the opinion is reaffirmed that a minority cannot elect.—(Cont. El. from 1865 to 1871, page 422.)

The case of Christy *vs.* Wimpy is of a similar character.—(Cont. El., 1865 to 1871, page 464.)

Also the case of Jones *vs.* Mann, 1869.—(Cont. El., 1865 to 1871, page 471.)

The case of Wallace *vs.* Simpson, 1870, has been referred to as sustaining the English rule. But an examination of that case shows that it was decided on wholly different grounds. That the proposition "that when one of two candidates is ineligible the votes given for him are of no effect, and the other candidate is elected," was maintained by but one member of the subcommittee, Mr. Cessna, while it is expressly stated that the other two members, Mr. Hale and Mr. Randall, dissented from the proposition.—(Cont. El., 1865 to 1871, page 731.)

In the case of Zeigler *vs.* Rice, of Kentucky, 1870, it is decided that even where there is notice of ineligibility of the successful candidate this does not entitle the minority candidate to take his seat. The majority report of the committee in this case states:

"The committee are well satisfied that the acts of the contestee were well understood by the voters of said district at the time contestee was voted for, but do not agree with contestant that as contestee was ineligible, the candidate who was eligible is entitled to the seat."—(Cont. El., 1865 to 1871, page 884.)

The removal of disabilities by the action of Congress, of the same nature as these under which Vance labored, is a decision in the strongest possible terms that such votes are not nullities; that the election of such candidate is not void but voidable only. For if they were nullities, and the election of such candidate void, then Congress, by such action as it has taken, has elected members to one of its own houses without reference to the action of the people. As an example, we may refer to the case of R. R. Butler, of Tennessee (Contested Election Cases, 1855–'71, page 464); also case of Young, of Georgia.

But suppose that it is admitted that the English rule is applicable here, do the facts in this case bring it within that rule? Were the votes for Vance cast in willful obstinacy for a candidate the voters knew, or had good reason to believe, would not be entitled to take his seat? The memorialist avers that the fact that Vance was known to be ineligible is not controverted. That his ineligibility was a matter of public notoriety in North Carolina is doubtless true, and that it was known to most if not all of the members of the legislature is quite probable; yet no evidence has been presented to the committee proving this fact, or that notice of his disqualification was given at the time the vote was taken.

Let us even go one step further, and suppose that the evidence on this point was clear and explicit; are we not justified in believing that those who voted for Vance did so in good faith, believing that his disabilities would be removed after the election by the action of Congress, basing this presumption on the precedents which had recently been set in similar cases? Nor is this by any means an improbable hypothesis, but accords much better with the facts presented to the committee than the hypothesis that the votes given for Vance were cast in "willful obstinacy" for a candidate they knew would not be admitted to his seat. If they were given under the impression that these disabilities would be removed, then, although unavailing, they cannot be rejected from the count. And the committee would again refer to the report of the committee in the case of Yulee *vs.* Mallory, of Florida, 1852, where the following language is used which is applicable to this view of this case:

"If blank votes are beyond a doubt a nullity; if the resolution is to be regarded of no effect, and we are brought to the question, under these circumstances, whether Mr. Yulee is duly elected, it seems to us difficult to maintain the affirmative of that proposition upon the facts before us. If the members were misled on both these material points by assuming that their previous doings afforded safe and certain rules of action, then they were misguided by what they had a right to consider as authority, and must have acted under a misconception of right, which stood, as they supposed, unquestioned. If this be so, they stand substantially in the condition of an elector who votes for a person disqualified, believing him to be qualified. The vote in such case, though unavailing, is not rejected from the count."—(Contested Election Cases, 1864–'65, page 610.)

Under the English rule, it is the fact that the voters knowingly and purposely throw away their votes that lays the foundation for saying they assent to the election of the minority man. But no such purpose can be predicated of the legislature of North Carolina. They did not know that their votes for Vance would be thrown away. They did not purposely throw them away, because Congress had in numerous cases previously

removed disabilities of a similar character from those elected and allowed them to hold their offices. Nearly all of the officers elected in this State in 1868 had their disabilities removed by the act of June, 1868, and were allowed by virtue thereof to enter upon and discharge the functions of their respective offices.

The same act removed the disabilities of a large number of persons elected in Alabama in February, 1868, and at the close of the section contains this sweeping clause:

"And also all officers-elect at the election commenced the 4th day of February, 1868, in said State of Alabama, and who have not publicly declined to accept the offices to which they were elected."—(15 Stat. at Large, 366, 2.)

These were certainly sufficient to raise in the minds of the members of the legislature of North Carolina who voted for Vance the belief that his disabilities would be removed and that he would be allowed to take his seat. In fact, they had good right to believe that this was the rule, and the opposite the exception, especially where the persons so elected were known to favor the restoration of order and obedience to law.

Again, it may be fairly argued that the fourteenth amendment to the Constitution did not disqualify Vance to be elected, but only to hold the office of Senator in case his disability should not be removed. Upon this interpretation his election was voidable only, and not void, and, as a consequence, Abbott was not elected. But even if this interpretation is erroneous, it is one the legislature of North Carolina might (and as nothing to the contrary is shown, we are to presume did) honestly entertain (especially in view of the action of Congress above referred to), and if they elected Vance under a mistake in law, his election was not void, but only voidable.

Although the committee have referred to the decisions of the courts and legislative bodies of this country bearing upon this case, the tenor of which is believed to be decidedly adverse to the claim of the memorialist, yet this appears unnecessary, as a careful examination of the act of Congress of July 25, 1866 (which has already been alluded to on one point), when applied to the facts in this case, would seem to be an effectual bar to the claim of the memorialist.

The first section of this act is as follows:

"That the legislature of each State which shall be chosen next preceding the expiration of the time for which any Senator was elected to represent said State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress, in the place of such Senator so going out of office, in the following manner: Each house shall openly, by a *viva voce* vote of each member present, name one person for Senator in Congress from said State, and the name of the person so voted for who shall have a majority of the whole number of votes cast in each house shall be entered on the journals of each house by the clerk or secretary thereof; but if either house shall fail to give such majority to any person on said day, that fact shall be entered on the journal. At 12 o'clock meridian of the day following that on which proceedings are required to take place as aforesaid the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person shall have received a majority of all the votes in each house, such person shall be declared duly elected Senator to represent said State in the Congress of the United States; but if the same person shall not have received a majority of the votes in each house, or if either house shall have failed to take proceedings as required by this act, the joint assembly shall then proceed to choose, by a *viva voce* vote of each member present, a person for the purpose aforesaid, and a person having a majority of all the votes of the said joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected; and in case no person shall receive such majority on the first day, the joint assembly shall meet at 12 o'clock meridian of each succeeding day during the session of the legislature, and take at least one vote until a Senator shall be elected."

The passage of this act was evidently intended to be an exercise of that authority conferred upon Congress by Article I, section 4, of the Constitution, so far as the same relates to the election of Senator. This section provides that—

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed by each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

The words "such regulations" in the latter clause refer to "the times and manner of holding elections" in the first clause ("places" being expressly excluded); therefore, by virtue of this provision, Congress has power—so far as the election of Senators is concerned—to prescribe the times and manner of holding elections. The act of July 25, 1866, is evidently intended to do this, and therefore has taken it out of the power of the legislatures of the States to determine either the times or manner of holding these elections so long as this act remains unrepealed.

In regard to the time fixed there is no difference of opinion. What then is prescribed

in regard to the manner of holding the election in the first provision of the section? "Each house shall openly" do what? "Name one person for Senator in Congress from said State." How? "By a *viva voce* vote of each member present." If we give to each word of this clause its full force and effect, consistent with the other portions of the provision, what are we to understand by "each member present?" Does it signify those voting only, or has it some other meaning? If we refer to the second provision of the section we find the words "present" and "voting" both used in the same clause, showing clearly that the two are intended to have different significations. But it is insisted that if we give this construction to the provision of the act in relation to the election by the two houses, it is equivalent to saying that to obtain an election every member present must vote, thus placing it in the power of a single member so present to defeat an election on that day. If, on the other hand, it only applies to those voting, what force and effect do we give to these words?

It is manifest that the second provision of this section was intended to take it out of the power of a small majority in one house, by preventing an election, to defeat the election of a candidate in favor of whom there is a majority of the aggregate of the two houses, and as the usual method of proceeding is changed by this provision, it was necessary to prescribe what should constitute a quorum. A majority of all the members elected to both houses are required to be present to constitute this quorum, and the person elected is required to have a majority of all the votes of said joint assembly.

What shall constitute a quorum in each house on the day the vote is taken separately is left to the constitution and laws of the State. The constitution of North Carolina requires a majority of each house to be present; it follows that the provisions of the two parts of the section are substantially the same. For upon what grounds can we suppose that Congress would require a majority of a quorum on the second day to elect, and not on the first?

Your committee is therefore satisfied that Congress, in the passage of this act, contemplated and intended that in the election of Senators, whether under the first or second provisions of this section, to be valid, it should appear that a quorum was present and voting.

It is, moreover, evident from the very wording of this act that Congress did not even contemplate the possibility of an election by a minority under any circumstances, but by this act imply the opposite; for in the provision relating to the election by the two houses, separately, it is required that "the name of the person so voted for, who shall have a majority of the whole number of votes cast in each house, shall be entered on the journal of each house." This language is plain and easily understood. If any person receives a majority of the votes cast his name is to be entered on the journal; nothing is said of those in the minority; no evidence is to be preserved of the fact that they were known in the election; nothing is required to be said about the number of votes that even the successful candidate receives; the simple fact that Mr. A. received a majority of all the votes cast is all that is required. The next day the two houses shall convene in joint asssembly and compare journals, and if the same name and same fact in regard to him is on each, he is to be declared duly elected. But if neither candidate receives a majority the first day, the fact is to be entered on the journal; nothing more is required; no person has received a majority, and there is no use to preserve upon the record anything but that fact; yet it is possible that one out of three candidates may be known to be ineligible by those voting for him. If the second out of three candidates was disqualified, and those voting for him knew it, the case would be much more plausible than the present one. Yet this act contemplates no such contingency. Your committee is aware that this inference has no binding force; it is only alluded to to show that the idea of a minority candidate being entitled to his seat under any circumstances is at war with the very spirit of our laws and institutions, and that the principle involved in this case is at variance with the spirit of the law upon which the memorialist founds his claim to a seat.

It has been suggested that there is a distinction in respect to the operation of the rule insisted on by the memorialist, between a popular election, under our liberal system of suffrage, for a member to the House of Representatives by ballot and an election of a Senator by *viva voce* vote of the members of a legislature.

Your committee are inclined to think this is correct, but that the distinction bears against the claim of the memorialist instead of in favor of it.

The number of persons entitled to vote at a popular election is not fixed and definite, and hence it is impossible to have a quorum or anything answering thereto. There is no power to compel attendance. This is, and necessarily must be, wholly voluntary; therefore it is necessary that those attending should have the right to elect, where the election is free, and are prevented from attending by force, intimidation, or fraud. If a candidate receiving the majority is disqualified, and the votes cast for him are declared nullities (as claimed by the memorialist), the remaining votes are as effectual to elect as if every voter of the district had been present; and if those who voted for the can-

didate receiving the majority had not been present at all, the election nevertheless would have been valid. But the rule is wholly different in legislative bodies. The number is fixed and definite, a quorum can be and is required to act, and the presence of a less number is not effectual. Had but the thirty-two who voted for Abbott been present in the house at the time the vote was cast, we do not suppose any one would contend that he had even a shadow to base his claim upon; yet this number would be sufficient to elect in a district of a thousand voters if no others voted. We therefore coincide in the view that there is a difference, and that, even if the English rule was applicable in the case of an election of a member to the House of Representatives, it would by no means follow that it was applicable to the election of a Senator where the number voting, of the votes counted, is less than a quorum.

Your committee, therefore, after a full hearing of the case and examination of the authorities, come to the conclusion that the Hon. Joseph C. Abbott, of North Carolina, is not entitled to a seat in the United States Senate, and recommend the adoption of the following resolution:

Resolved, That Joseph C. Abbott, not having received a majority of the votes cast by the North Carolina legislature on the second Tuesday in November, 1870, for the office of Senator of the United States, is not entitled to a seat in said United States Senate as such Senator.

O. P. MORTON.
JOHN A. LOGAN.
A. G. THURMAN.
JOSHUA HILL.

The following statement of Mr. Ransom, of North Carolina, is herewith presented with the report of your committee:

"Immediately after the election in North Carolina in 1870, which resulted in the triumph of the Democratic-Conservative party, the question of the election of a United States Senator became one of great, exciting interest throughout the State, and very soon assumed a sectional (State) character. Governor Vance, Governor Graham, and Judge Merrimon were the persons most prominently brought forward by the western gentlemen and papers. The "west" (of the State of North Carolina) insisted most earnestly that their section, of right, ought to have the Senator. Article after article was written in the western papers, claiming the Senator for the west, and there was great feeling on the question when, in November, 1870, the legislature met.

"Immediately on its meeting Mr. Jarvis, an eastern member, was elected speaker of the house, and this event gave western gentlemen still further ground to claim the Senator. Mr. Jarvis, in caucus, beat Mr. Welch and Colonel McAfee, both western gentlemen.

"The Democratic caucus met.

"Vance's, Merrimon's, Graham's, Warren's, and Ransom's names were before the caucus.

"The balloting at first was entirely indecisive.

"While the Democratic strength in the legislature was from 105 to 110, only 94 members attended caucus.

"On the eighth ballot Merrimon was ahead, receiving 35 votes; Vance and Ransom about 25 each, and Graham some 9 or 10.

"Merrimon's vote then declined and Graham's vote went up; when Ransom's strength was developed and his vote began to go up.

"The balloting continued, and finally, Ransom being ahead, Vance's vote went up on the twenty-sixth ballot, Ransom then having 42, Vance 39, about 10 for Graham, and 3 scattering, when Graham's friends, western men, went to Vance, and the last ballot was—for Vance, 48; Ransom, 46. Vance was nominated, the vote standing 48 for Vance and 46 for Ransom.

"After the twelfth ballot Ransom had been ahead of Vance until the twenty-sixth ballot, and on the twenty-seventh the Graham men went to Vance and elected him.

"There were about 35 Democrats from east of Raleigh, and about 70 or 75 west; but only 94 at caucus.

"Vance's great personal popularity accounts for his running ahead of Graham and Merrimon, both western men; and his popularity and position in the west, he living in the stronghold of the western Democracy, beat Ransom.

"Had Vance's disability been removed he would have beaten all his opponents without a struggle; while it is simple candor to say that Ransom would beat any other man except Vance. The last election proves this.

"Vance's nomination was then owing to his being a western man and his great personal popularity, both causes contributing to his nomination; his popularity beating Graham and Merrimon, and his position and popularity together beating Ransom.

"Merrimon had no disabilities.

"Graham was laboring under disabilities.

"DISABILITIES.

"Before the caucus met, and at the caucus, it was generally stated that Vance's disabilities would be removed and that he would be admitted. It was generally argued and believed that many influential Republicans of the North had assured Vance that his disabilities would be removed, and Vance himself expressed no doubt of it. His friends, by authority, stated in caucus that Vance would resign unless admitted.

"REMOVAL OF DISABILITIES.

"On the 20th of April, 1868, an election took place in North Carolina for all the State officers—governor, lieutenant-governor, secretary of state, treasurer, judges of the supreme court, judges of the superior courts, the probate judges, members of the legislature, and all county officers, sheriffs, &c.

"On the 25th June, 1868, two months after this election, Congress removed the political disabilities of most of these officers, nearly all of whom were under disability when elected.

"Governor W. W. Holden and Mr. Thomas Ashe and Mr. D. R. Goodloe were the candidates for governor—Holden, Republican; Ashe, Democrat, and Goodloe, Republican. Goodloe was eligible, and he received only 300 out of 170,000 votes. The fact that he (Goodloe) only was eligible, and the others not, was fully discussed in the papers and canvass.

"On the 25th of June, as aforesaid, Todd R. Caldwell, lieutenant-governor, was also relieved.

"And so were Richmond Pearson, chief-justice; Robert P. Dick, associate justice; Thomas Settle, associate justice; Edwin G. Read, associate justice supreme court. And so with many of the judges of the superior courts: Daniel L. Russell, Anderson Mitchell, C. R. Thomas (now member of Congress), Judge Logan, &c.

"The superintendent of public works, C. L. Harris; W. L. Adams, auditor of public accounts; Joseph W. Holden, speaker of the house of representatives, and nearly every white member of the legislature of 1868, which actually elected Mr. Abbott to the Senate when he was admitted, and, as before said, nearly if not all of the county officers in the State—all, all had their disabilities removed after the election.

"And in the same act of June 25, 1868, it is declared in section 2, page 581 (Congressional Globe, part 5, 2d sess. 40th Cong.):

"'* * * And also all officers-elect at the election commenced the 4th day of February, 1868, in said State of Alabama, and who have not publicly declined to accept the offices to which they were elected.'

"This is the concluding sentence after the enumeration of a long list of persons in Alabama.

"GOVERNOR VANCE AND SENATOR POOL.

"About the 4th of March, 1871, great anxiety was felt by the legislature as to Vance's prospects, and Mr. Martin, member of the legislature from Carteret, introduced a resolution looking to Vance's resignation and another election. There was great interest on this question, and a caucus of the Democrats called with a view to settle the matter, when, on the 17th of March, 1871, Mr. Cowles, a senator in the North Carolina legislature, read from his place in the senate this letter from Hon. John Pool, now Senator in Congress, and this assurance quieted the legislature, and no action was taken.

"This letter is herewith presented.

"A. C. Cowles, esq., the senator from Yadkin County, recently wrote to Hon. John Pool at Washington in regard to the prospect of Governor Vance obtaining his seat, and received the following answer:

"'SENATE CHAMBER,
"'*Washington City, March* 17, 1871.

"'MY DEAR SIR: You ask me as an old friend to tell you candidly if Governor Vance is likely to be relieved. The Senate committee has just reported a bill for his relief, and it will pass next December, if not before. In the present state of things here it may not be acted upon this session, as Congress refuses to take up any business except some few special matters. But even at this disadvantage Vance stands a good chance of being relieved before we adjourn. Many Senators heretofore opposed will vote for him now. If Congress remains in session two weeks he will be relieved at this session. The House would pass the bill by an immense majority. I hardly have a doubt as to his final relief early in the next session.

"'I have not time to write more fully.

"'Very truly, &c.,

"'JOHN POOL.'"

VIEWS OF THE MINORITY OF THE COMMITTEE ON PRIVILEGES AND ELECTIONS.

FEBRUARY 28, 1872.—Ordered to be printed.

Mr. Carpenter asked and obtained leave of the Senate to present the following as the views of the minority:

A minority of the Committee on Privileges and Elections, to whom was referred the memorial of Joseph C. Abbott, who claims to be entitled to a seat in this body as Senator from North Carolina, for the term commencing on the 4th day of March, A. D. 1871, respectfully submit the following report:

The gravity of the question now for the first time directly presented to the Senate, and the fact that the decision which shall be made in this case will be a precedent, render it desirable that the question should be fully considered; and believing that the conclusion arrived at by the committee is erroneous in law, we present to the Senate the reasons which have compelled us to dissent.

The Constitution of the United States, Article I, section 5, provides:

"Each House shall be the judge of the elections, returns, and qualifications of its own members."

The duty cast upon the Senate by this provision of the Constitution is judicial in character. We may not inquire or consider what party interests demand; whether it would appear impartial to decide against a political friend, or whether a decision in his favor would be condemned in political circles. The question to be determined is one of strict right, depending upon legal principles, as settled by former decisions, parliamentary and judicial; and we have no more right than a judge upon the bench to turn away from the law to consider the political or partisan interests involved in the case or to be affected by the decision.

The case is this: On the 4th of March, 1871, the term of service of Joseph C. Abbott as Senator from North Carolina expired. On the second Tuesday of its session, in November, 1870, the day prescribed by law, the two houses of the legislature of North Carolina proceeded to the election of a Senator from that State for the succeeding term of six years, commencing on the 4th day of March, 1871, with the following result:

In the house of representatives:

	Votes
Zebulon B. Vance received	6[illegible]
Joseph C. Abbott received	3[illegible]
Scattering	1[illegible]
Members present	10[illegible]

In the senate:

Zebulon B. Vance received	3[illegible]
Joseph C. Abbott received	1
Scattering	
Members present	4

these numbers constituting a quorum of each house of the legislature respectively.

On the following day the two houses, in the usual form, declared that Vance had received a majority of the votes in both houses, and was duly elected for the said term.

Had Vance been qualified to serve, there would be no question as to his right. But he was disqualified by the fourteenth amendment to the Constitution of the United States for the reason that he had been a member of the Congress prior to the rebellion, and, as such member, had taken an oath to support the Constitution of the United States, and during the rebellion he had acted as colonel in the rebel army, and taken an oath of allegiance to the so-called Confederate States of America; and he had acted as governor of the rebel State of North Carolina from August, 1862, to April, 1865; and this disqualification was notorious—known to all the members of the legislature at the time of his election, and to all the people of that State. The fact that Vance was known to the members of the legislature who voted for him for Senator to be disqualified is not controverted. On the contrary, General Ransom, who claims to have been subsequently elected, upon the resignation of Vance, was heard before your committee, and frankly admitted that the fact that Vance was disqualified was well known to all the members of both houses of the legislature at the time of his pretended election.

It is admitted on all hands that the election which was held, as before stated, conferred no right upon Vance to a seat in this body; but Abbott, who was qualified, and who received the next highest number of votes cast, and a majority of all the votes cast for qualified candidates in both houses, insists that he was elected at said election, and now entitled to the seat; and this is the question to be determined.

The Constitution, Article I, section 4, provides:

"The times, places, and manner of holding elections for Senators and Representativ

ɪrescribed in each State by the legislature thereof, but Congress may at any
aw, make and alter such regulations, except as to the places of choosing Sen-

ɛction of Senators is thus, by the Constitution, committed to the regulation of
ɛtive States, except so far as Congress, under this provision, may legislate upon
ct. The only act of Congress applicable is that of July 25, 1866, as follows:
the legislature of each State which shall be chosen next preceding the expira-
ɪe time for which any Senator was elected to represent said State in Congress
the second Tuesday after the meeting and organization thereof, proceed to elect
r in Congress in place of such Senator so going out of office, in the following
Each house shall openly, by a *viva voce* vote of each member present, name one
r Senator in Congress from said State, and the name of the person so voted for
l have a majority of the whole number of votes cast in each house shall be en-
the journal of each house by the clerk or secretary thereof; but if either house
to give such majority to any person on said day, that fact shall be entered on
al. At 12 o'clock meridian of the day following that on which proceedings are
to take place, as aforesaid, the members of the two houses shall convene in joint
, and the journal of each house shall then be read, and if the same person shall
ɛived a majority of all the votes in each house, such person shall be declared
ted Senator to represent said State in the Congress of the United States; but if
person shall not have received a majority of the votes cast in each house, or if
ɪse shall have failed to take proceedings as required by this act, the joint
shall then proceed to choose, by a *viva voce* vote of each member present, a per-
ɪe purpose aforesaid, and a person having a majority of all the votes of the said
mbly, a majority of all the members elected to both houses being present and
ɪall be declared duly elected; and in case no person shall receive such majority
st day, the joint assembly shall meet at 12 o'clock meridian of each succeeding
ɪg the session of the legislature, and take at least one vote until a Senator shall
d."—(U. S. Laws, vol. 14, page 253.)
ɛt was intended to assure the election of a Senator by the action of the two
parately, or in case of a failure to elect in that mode, then by joint assembly of
ɪouses commencing on the following day and continuing day after day until a
uld be reached. This act deserves a careful consideration, because it is insisted
conclusions herein arrived at are in conflict with its provisions. In regard to
ɪy the houses separately it is provided:
house shall openly, by a *viva voce* vote of each member present, name one person
ɪr in Congress from said State, and the name of the person so voted for who shall
ɪjority of the whole number of votes cast in each house shall be entered on the
f each house by the clerk or secretary thereof."
be perceived that this act does not attempt to determine what shall be a quorum
ɪuse, but leaves that question to be determined by the constitution and laws of
. By the constitution of North Carolina it is provided:
ɪer house shall proceed upon public business unless a majority of all the mem-
ɪctually present."
t necessary that all the members should participate in the transaction of public
by either house, but merely that a majority of all the members should actually
t in each house. But in providing for an election by the joint assembly of the
ɛs the act of Congress does provide that in such election—
ɪerson having a majority of all the votes of the said joint assembly, a majority
members elected to both houses being present and voting, shall be declared duly

ference in these two provisions is not one of phraseology merely, but of sub-
In the election by the two houses separately in North Carolina, if a majority of
ɪers elected to each house are actually present, the person who shall receive the
ɪumber of votes cast, though that may be less than half of a constitutional quo-
be declared elected; but in the election by the joint assembly it is not enough
ɪdidate should receive a majority of all the votes cast, but he must receive a
of "all the votes of the said joint assembly—a majority of all the members
both houses being present and voting." These provisions are so materially
that the variation cannot be regarded as accidental, and the reason for the dis-
is, no doubt, that the act intended to leave the matters of a quorum and the
gs of the houses acting separately to be regulated by the constitution and laws
ɪte, but the act intended to provide what should be necessary to constitute a
and make an election in the joint assembly—a body created by the act, and
ɪceedings might not be regulated by the constitution of the State.
nly necessary in this case to consider the effect of the proceedings in the two
the first day, because it is upon those proceedings Mr. Abbott founds his claim.

If he was legally elected on that day the subsequent proceedings by the joint assembly could not affect his right, nor can such claim be affected by any subsequent proceedings of the legislature. His claim depends upon the legal effect of what took place in the two houses on the first day of the election.

It is insisted that the provisions of the act in relation to election by the two houses and by the joint assembly are substantially the same, because it is provided by the act that—

"Each house shall openly, by a *viva voce* vote of each member present, name one person for Senator, &c., and the name of the person so voted for who shall have a majority of the whole number of votes cast in each house shall be entered on the journal," &c.

And hence it results that to be elected on the first day the person must have a majority of all the members present. But this construction, which is equivalent to saying that, to make an election, every member must vote, would put it in the power of a single member of the legislature to defeat an election on that day. This could not have been intended, and that clause must be regarded as relating merely to the manner of voting; and if a number of votes are cast for a qualified candidate, and the other members refuse to vote at all, then the person "who shall have a majority of the whole number of votes cast" must be deemed elected.

The provision concerning the joint assembly is materially different. There it is provided:

"The joint assembly shall then proceed to choose, by a *viva voce* vote of each member present, a person for the purpose aforesaid, and a person having a majority of all the votes of the said joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected."

The clause "a person having a majority of all the votes of the said joint assembly, a majority of all the members elected to both houses being present and voting," undoubtedly requires that to make an election a candidate must receive a number of votes greater than half of the majority of both houses. The difference between the two provisions is this: if a majority or quorum of each house are actually present when each house proceeds to the election on the first day, the person receiving the highest number of votes cast is elected, though receiving less than half of a majority. But in the joint assembly it is necessary to an election that a candidate should receive the votes of more than half of a majority of both houses.

It is a well-established rule for construing statutes that every clause, phrase, and word must be deemed to have been added to the statute for the purpose of accomplishing some end that would not be accomplished without it.

Dwarris on Statutes (Potter's edition, 1871), 198, says:

"It is a safe method of interpreting statutes to give effect to the particular words of the enacting clauses. For when the legislature in the same sentence uses different words the courts of law will presume that they were used in order to express different ideas. So, if there be a material alteration in the language used in the different clauses, it is to be inferred that the legislature knew how to use terms applicable to the subject-matter. 'The several inditing and penning of the different branches,' said the judges in Edrick's case, 'doth argue that the maker did intend a difference of the purviews and remedies.'"

To the same effect, see Rex *vs.* Bolton (5 Barn. and Cres., 74).

Applying this familiar precept to the statute before us, it must be held that the provision in regard to an election by the joint assembly requiring a person to receive "a majority of all the votes of the said joint assembly," which is not found in the act in relation to an election by the two houses acting separately, was added for the purpose of requiring in one case what was not necessary in the other. It may be said that the same thing ought to be required in the one case as in the other, and that the act of Congress ought not to be so construed as to permit an election by the minority in one case and to forbid it in the other. But the answer to this is obvious. Before the passage of this act the States elected Senators by various methods; some by a joint assembly of both houses and some by the action of the two houses separately. In those States which elected by the latter method the houses might sometimes disagree, and thus defeat an election. It was the manifest intention of the act of Congress to afford to a legislature the opportunity of electing a Senator by the separate action of the houses, and in doing so to leave the whole detail of the election to be regulated by the parliamentary usage of the State. But in providing for an election by the joint assembly, a method not in use in some of the States, it was necessary to provide what should be a quorum, and what should be necessary to an election.

As the act of Congress does not affect the question under consideration, resort must be had to the precedents and authorities, English and American.

It is admitted that when the electors vote for a disqualified candidate, in ignorance of his disqualification, the election is void, and must be remitted to the elective body.

But it is insisted that where, as in this case, the electors (the members of the two houses) had full knowledge of the disqualification, votes cast for such person are considered as thrown away, and the qualified candidate receiving the next highest number of votes, and a majority of all votes cast for qualified candidates, is elected. If this proposition is well grounded, Mr. Abbott is entitled to a seat; and this is the precise question upon which we are to consult the authorities.

Mr. Abbott furnished to your committee a printed brief containing references to and quotations from the decisions upon this question from the earliest times, which quotations are embodied in this report.

Rogers on Elections (ed. 1847, ch. 7) says:

"The principle upon which courts of law have acted in such cases is broad and uniform, and is thus laid down, and the authorities all cited by Lord Ellenborough in pronouncing the judgment of the Court of King's Bench in the case of Rex *vs.* Hawkins (A. D. 1808), 10 East, 211, which judgment was affirmed upon appeal to the House of Lords (2 Dow, 124).

"The general proposition that votes given for a candidate after notice of his being ineligible are to be considered the same as if the person had not voted at all is supported by the cases of The Queen *vs.* Boscawen, E. T., 13 Anne, 1713; The King *vs.* Withers, E. T., 8 Geo. II, 1835; Taylor *vs.* Mayor of Bath, M., 15 Geo. II, 1742, all of which are cited in Cowper, 537, in King *vs.* Monday (A. D. 1777). In the first, Boscawen and Roberts, the two candidates, had an equal number of votes, but because Boscawen was incapable, the votes given for him were considered as thrown away, and the other duly elected. In the second case, Withers had five votes out of eleven, and the other six refusing to vote at all, the court held Withers duly elected, and the six who refused to vote were virtually consenting to the election of Withers. In the third case, Taylor, Biggs, and Kingston were candidates. Biggs was objected to as a disqualified person, notwithstanding which Biggs had 14 votes, Taylor 13, and Kingston only 1. Then Lord Chief-Justice Lee, at *nisi prius*, directed the jury that if they were satisfied that the electors had notice of Biggs's want of qualification they should find for the plaintiff (Taylor), because Biggs, not being qualified, was to be considered as a person not *in esse*, and the voting for him a mere nullity. The jury found for the plaintiff, and the court, on a motion for a new trial, agreed with the law as laid down by Lord Chief-Justice Lee, and refused a new trial. The same principle has been acted on in the case of Claridge *vs.* Evelyn (1821), 5 B. and A., 81, where an infant, having been elected to the office of clerk of a court of requests, notice was given at the time of his election of his ineligibility on the ground of nonage. An action was brought for a false return by the unsuccessful candidate, and a verdict given for the plaintiff, subject to the opinion of the Court of King's Bench. At the close of his judgment, after argument, Abbott, C. J., said: 'I am of opinion, therefore, that he (the infant) was ineligible; and due notice of his incapacity having been given to the electors at the time of his election, their votes were thrown away, and consequently there must be judgment for the plaintiff.' (*Vide* also R. *vs.* Coe., Haywood on County Elections. 538; R. *vs.* Parry & Phillips (1787), 14 East, 549; R. *vs.* Bridge (1811), 1 M. & S., 76.)

"Fife, 1 Luders, 435 (A. D. 1785–'90): General Skene was elected. Mr. H. gave notice at the poll that General Skene was incapacitated by reason of holding the offices of baggage-master to the forces and inspector of the roads, and petitioned upon those objections. The committee seated Mr. Henderson, on the ground that the novel creation of one of the offices was notorious and within Anne, c. 7, s. 625 (*a*).

"Cockermouth (1717), 18 Journ., 673: The votes were. for Sir Wilfred Lawson 90, for Lord Percy Seymore 84. The former had been proved at the election to be under twenty-one years of age. The House seated Lord Percy Seymour.

"Flintshire, 1 Peck, 526 (1802–1806): The facts and decisions the same as in the case of Cockermouth.

"Second Southwark (Clifford, 130, 1796): The former committee having resolved, 'that at the last election for the borough of Southwark G. W. Thellusson, esq., did act in violation of the statute of the 7 W. III, c. 4, whereby he is incapacitated to serve in Parliament upon such election,' and notice having been given of this resolution, the petitioner was seated with a minority of votes.

"Second Canterbury (Clifford, 353): The first committee merely declared that neither of the sitting members was duly elected, and that the election was void. The second committee found specially that the first election was declared void for bribery and corrupt practices only; and having heard evidence that notice was given at the election of the ineligibility of the sitting members on account of bribery and corruption at the former election, and that copies of the opinions of three counsel, all stating that the sitting members were ineligible, were read, seated the petitioners with the minority of votes. (Kirkcudbright, 1 Luders, 72 *ante*, 72 *et seq.*; Radnorshire, 1 Peck, 496; Leominster, 1 C. & D., 12; and 2 Dungarvon case K. & Ambl., 6).

"Leominster (1827), C. & D., 1: *Objection made that* the candidate had declined to

take the qualification oath when requested so to do. His return declared void and the petitioner seated."

Haywood on County Elections, 535, says:

"It must be remembered, however, that in case a candidate laboring under disabilities should be returned, the election will be avoided on petition; and that if, before the election comes on, or a majority has polled, sufficient notice has been publicly given of his disability, the unsuccessful candidate next to him on the poll must ultimately be the sitting member. * * * When the disability of the candidate is notorious, it should seem that it was not necessary to give notice to the electors."

Roe on Elections (ed. 1818), page 256, says:

"If there be no other candidate than the person incapacitated, the election will necessarily be void; but if, besides such incapacitated person, there be also one or more candidates, it is a very important question whether, in consequence of the incapacity of the former, the electors are to be called upon to reconsider their choice, or whether they are to be represented by the second in number upon the poll, he in reality being regarded the first by reason of the nullity of the franchise given to the other candidates. It will be seen that the latter proposition is that which constitutes the law in cases where misapplication of the franchise by the electors was willful, and therefore made in their own wrong."

Male on Elections, 336, says:

"If the election is made of a person or persons ineligible, such election is void either *in toto* or of one only, according as the ineligibility applies to all or one only, where that ineligibility is clear and pointed out to the electors at the poll. It has been held that the votes given to such ineligible candidate, after notice, are thrown away, and a competitor, though chosen by a smaller number of electors, has in such case been held duly elected.

"But such ineligibility ought to be clear, and grounded upon some known and settled rule of law. The same doctrine holds at law in the election to offices in which, after notice of the ineligibility of any particular candidate, the votes given to him are held to be thrown away."

Clerk on Elections, page 156, says:

"Whenever a candidate is disqualified from sitting in Parliament, and notice thereof is publicly given to the electors, all the votes given for such disqualified candidate will be considered as thrown away, and the other candidate, with a minority of votes, will be in position to claim the seat on proof of the existence of the disqualification, and that sufficient notice has been given of it to the electors."

2 Kyd on Corporations, 12, says:

"Two requisites are necessary to make a good election: 1. A capacity in the electors. 2. A capacity in the elected. And unless both concur the election is a nullity. With respect to the capacity of the electors, their right is this: They cannot say there shall be no election, but they are to elect; therefore, though they may vote and prefer one to fill an office, they cannot say such a one shall not be preferred; or by merely saying we dissent to every one proposed, prevent any election at all. Their rights consist in an affirmative, not a negative declaration. Consequently, there is no effectual means of voting against one man but by voting for another; and even then, if such other person be unqualified, and the elector has notice of his incapacity, his vote will be thrown away."

Grant on Corporations, 109, says:

"When the ineligibility of a candidate arises from his holding or having held a public office, the people within the jurisdiction of such office are held in law to know and are chargeable with notice of such ineligibility."

And on page 208 he says:

"A disqualification, patent or notorious, at once causes the votes given for the candidate laboring under it to be thrown away."

Arnold on Corporations, 141, says:

"The general rule may be stated thus: If a candidate for an office is ineligible at the time of the election by reason of any disqualification, and public notice of such disqualification is given at the election, all votes given for that candidate after such notice are thrown away; and if there are other eligible candidates, the one who has the largest number of votes will be duly elected."—(*Vide* R. *vs.* Hawkins, &c.)

In King *vs.* Parry (in 1811), 14 East., 559, it was ruled:

"When a candidate is disqualified for sitting in Parliament, and notice thereof is given to the electors, all votes given for such candidate will be considered thrown away, and the other candidate, with a minority of votes, will be in a position to claim the seat on proof of the existence of the disqualifications."

In Rex *vs.* Blissell, upon a motion for a new trial, Lord Mansfield, interrupting counsel for the Crown, who was arguing that the disqualification was not notorious, said:

"Do you doubt that, if he is really disqualified, whether such disqualification is noto-

ɩ, the votes given for him are thrown away? In another jurisdiction, if the ɪtion is notorious, it does more—it elects the other party; and of the law in ɔu can have no doubt."—(*Vide* Heywood on Elections, 533–537.)
mation of this rule, we have a decision that to vote knowingly for a disqualiate is equivalent to not voting at all. In the case of Taylor *vs.* Mayor of Bath, ɪve—
e judges held that the verdict was right. They held that, as the fourteen ɪo voted for Biggs had notice that he was not qualified, their votes were thrown t when electors vote for a person not qualified it is the same thing as if they no votes at all, in which case it was not disputed that silence was a construct- ɩ."
n *vs.* Coaks (1855), 28 Eng. L. and E., 307, Lord C. J. Campbell said:
it is the law—both the common law and parliamentary law—and it seems to mmon sense, that if an elector will vote for a man who he knows is ineligible, ɪe did not vote at all, or voted for a non-existent person; as it has been said, ve his vote for the man in the moon."
now *vs.* Wainwright (2 Burr., 1017), it was held that if a majority dissent from ɪ, but vote for nobody else, the election by the minority is good. This case an election of town clerk by mayor, aldermen, and common council. Whole electors 25, of whom, after due notice, 21 assembled. Nine electors voted for while 11, protesting against any election at that time, refused to vote. As to ɪn of Seagraves, Lord Mansfield held:
ever electors are present and do not vote at all, they virtually acquiesce in the ɪade by those who do."
; *vs.* Monday (2 Cowp., 538), Lord Mansfield said:
the election of a member of Parliament, or a verderor, where the electors must ɪ an election, because they cannot stop for that day or defer it to another time, t be a candidate or candidates; and in that case there is no way of defeating ɪn of one candidate proposed but by voting for another."
hwark (Elections, 259), it is said—
it is willful obstinacy and misconduct in a voter to give his vote for a person ɪnder a known incapacity."—(See also Willcock, r., 215, 1827.)
Regina *vs.* Hiomes, 3 Nevill and Perry, 48, 1839; S. C., 7 Adolph. and E., 960; ɪa *vs.* Pancras, 1857, 7 Ellis and B., 954.
ɪng *vs.* Veley, decided in 1848, 7 Q. B. R., 437, Lord Dunnan, C. J., delivering ɪent of the court, after citing cases, said:
ɜ an elector, before voting, receives due notice that a particular candidate is disand yet will do nothing but tender his vote for him, he must be taken volunbstain from exercising his franchise; and, therefore, however strongly he may sent, and in however strong terms he may disclose his dissent, he must be taken assent to the election of the opposing and qualified candidate, for he will not ɪnly course by which it can be resisted; that is, the helping to the election of r person. He is present as an elector; his presence counting as such to make ɪuisite number of electors where a certain number is necessary; but he attends ɪ elector, to perform the duty which is cast on him by the franchise he enjoys ; he can speak only in a particular language; he can do only certain acts; any ɪuage means nothing; any other act is null; his duty is to assist in making an If he dissents from the choice of A, who is qualified, he must say so by voting ɪther also qualified; he has no right to employ his franchise merely in preventection, and so defeating the object for which he is empowered and bound to And this is a wise and just rule in the law. It is necessary that an election duly made, and at the lawful time; the electoral meeting is held for that pur- ; and but for this rule the interest of the public and the purpose of the meeting h be defeated by the perverseness or corruption of electors who may seek some ɪantage by postponement. If, then, the elector will not oppose the election of only legal way, he throws away his vote by directing it where it has no legal l in so doing he voluntarily leaves unopposed, *i. e.*, assents to the voices of the tors. * * * It follows from these observations that the true ground of the s that stated by Lord Mansfield in the case first cited: 'Whenever electors are ɪd do not vote at all they virtually acquiesce in the election made by those who * * In case of Taylor *vs.* Mayor of Bath, the counsel, in argument, took the n between not voting at all and voting for the disqualified candidate. They that silence might well be held to give consent, but that voting for the other ɪ was an express negative; it was the only way, they said, of voting against one r the other. But the court overruled the distinction. To vote for a person not they said, was the same thing as not to vote at all, which, it was admitted, ɪve been a constructive assent. It will not escape observation that, in all these

cases, the law required the concurrence of a majority of the electors present to ma election good. In none of them could it be stated as a tenable proposition that t nority could bind the majority, or make a good election against their votes. 'Ir them, too, the numerical majority were *de facto* opposed to the election made. Y fact was never considered as rendering the election in law other than by an actu jority."

Cushing's *Lex Parliamentaria* states the rule as follows:

"Section 111. Of elections of, and votes given for, disqualified persons.

"175. If an election is made of a person who is ineligible, that is, incapable of elected, the election of such person is absolutely void, even though he is voted for same time with others who are eligible and who are accordingly elected (see M Elections, 336); and this is equally true whether the disability is known to the e or not; whether a majority of all the votes or a plurality only is necessary to the el and whether the votes are given orally or by ballot.

"176. The principle above applies equally where the constitution or law poin among other eligible persons, the particular candidates to be voted for; in whi votes given for other persons are void. Thus the constitutions of Maine and Mas setts, providing that, in case of a failure to elect senators at the general electi deficiency shall be supplied on the day of the meeting of the legislature by such s as shall be elected and the members of the other branch from among the persons for and not elected as senators. All votes given on such occasions for any other tl candidate designated by law, though otherwise eligible, are thrown away.

"177. In England, where a plurality only is necessary to an election, and wh votes are given orally, it is also held that if electors have notice of the disqualif of a candidate, every vote given for him afterward will be thrown away and cons as not having been given at all. (King *vs.* Monday, Cowper's Reports, 537; E Hawkins, 10 East's Rep., 211, and cases there cited; 2 Dow's Rep., 124; Clari Evelyn, 5 Barnewall and Ald. Rep., 81; Rex *vs.* Coe, Heywood on County Election Douglas's Rep., 398, n.; Rex *vs.* Blissell, Heywood, 537; Rex *vs.* Parry, 14 Eas Rex *vs.* Bridge, 1 Maule and Selwyn's Rep., 76.) The effect of this rule is that no will the election of a disqualified person be held void, but if such election take after notice of the disqualification is given to the electors, the candidate havi next highest number of votes will be elected. (Fife, 1 Luders, 455; Cockermou Commons Jour., 672; Flintshire, 1 Peckwell, 526; Southwark, 2 Clifford, 130; C bury, 2 Clifford, 353; Kirkcudbright, 1 Luders, 72; Radnorshire, 1 Peckwell, 496 minster, Corbet, and Daniel, 1; Leominster, Rogers, App. IX; Cork County, Kna Ambler, 406; Belfast, Falconer, and Fitzherbert, 603; Rogers on Elections, 224 also Male on Elections, 336; and Abington, 1 Douglas, 419.) This doctrine, ho hard it may seem, is founded in the familiar principle that every man is bound to the law with reference to any act which he undertakes to do; and consequentl when an elector is apprised of the fact of disqualification of a candidate, and no standing gives his vote for him, the elector takes upon himself the risk of losi vote, if his construction of the law turns out to be wrong. (Rogers on Elections

"178. In this country it is equally true that the election of a disqualified pe absolutely void; and in those States where a plurality elects and where the vot given orally, as in England, votes given for a candidate after notice of his disqu tion are thrown away, and the candidate having the next highest number of v elected.

"179. In reference to elections by ballot, in which secrecy is the distinguishin ure, and in which, consequently, neither the returning officers nor the electors selves are supposed to know for whom the votes are given until the result is de it seems not unreasonable to consider the votes for ineligible candidates to be t away in all cases, and the opposing candidate elected, where the electors know, o be presumed to know, the disability; and in all cases where there is no such act presumed knowledge to hold the whole proceeding merely void.

"180. In reference to elections in which an absolute majority is requisite to a and in which, consequently, the whole number of votes received is first to be tained, votes given for ineligible persons must of course be excluded from the er ation, for the reason that as the whole balloting would be void and all the votes ex if they were all for such candidates, it would be preposterous to enumerate such where they constitute a part only of the votes given in. If, in consequence o exclusion, the result of the election would be different from what it would oth be, the whole proceeding must perhaps be held void or valid according as the e have actual or personal knowledge of the ineligibility of the persons for who excluded votes are given."

To the same effect see Wilson's Digest of Parliamentary Law, pages 107–114.

Angell and Ames on Corporations, page 98, n. 3, say:

"*If* the assembly be duly convened, and the majority vote for an unqualified

after notice that he is not qualified, their votes are thrown away, and the person having the next majority, and not appearing to be disqualified, is duly elected."

This subject has been discussed at different times in the legislature of Massachusetts, and it has been uniformly decided that votes given for candidates constitutionally ineligible should be regarded the same as blank votes. In 1843 an effort was made to change this parliamentary rule, and a majority of the committee submitted a report, accompanied by a resolution, to the effect that it was "not in accordance with the constitution and laws for the two branches of the legislature to reject in making up the count the ballots cast for ineligible candidates." A minority of the committee submitted an adverse report, saying:

"The fact that the votes given for ineligible candidates, when the two houses have met in convention for the purpose of filling vacancies in certain offices, have been rejected from the count, is of long standing; and that no evil has resulted from such practice is of itself a sufficient reason why a different rule should not be established. It is time enough to provide a remedy when an evil is found to exist, and not in anticipation of an evil. This it is believed is a safe course in all cases. * * * The practice of rejecting blank pieces of paper, although they may have the form and shape of the actual votes which are cast, is believed to be uniform everywhere. The reason for the rejection of such paper is that it is not a voice given and numbered; that no one is designated who can be elected.

"It is, however, no less an expression of dissatisfaction to the candidate voted for by other persons, on one side or the other, than it would be if it bore the name of an imaginary being or a person ineligible. In both cases it is not a vote and should not so be treated. So far as precedents can be found, the practice of rejecting from the count votes cast for an ineligible candidate is not peculiar to the convention of the two houses in the Massachusetts legislature. It has obtained more or less in the House of Representatives of the United States and in the House of Commons in Great Britain. * * * Inasmuch as the custom has obtained, for aught that appears, from time immemorial to reject such votes, the undersigned take leave to submit that the proposed resolution of the majority of the committee is uncalled for, and that no further action be had on such order."

The house laid the resolution of the majority on the table, thus in effect adopting the report of the minority.—(Cushing's Reports of Contested Elections in Massachusetts, page 499.)

The subject was again discussed, and the decision reaffirmed, that votes cast for ineligible candidates should be thrown away. In 1849 Mr. Slade was returned as the duly elected representative of the town of Somerset, and his seat was contested for the reason, among others, that a ballot for Nathaniel Morton, of Taunton, for member of Congress, was thrown out by the judges of election.

The committee, in their report declaring Mr. Slade lawfully entitled, discussed this question as follows:

"The policy of the law requires that such a construction should be put upon all proceedings at elections as to make such proceedings valid rather than nugatory. An election is always attended with trouble, inconvenience, and expense, and should not be set aside for light or frivolous causes. If votes cast by mistake for persons not eligible are to be counted, then the intention and will of the voter is defeated; if, on the other hand, such votes are willfully put into the ballot-box, the person who thus votes indicates so clearly his disregard of the value of the elective franchise that it is only a deserved punishment for his delinquency to deprive his vote of all weight and influence at such election. By so doing a voter is not deprived of any legitimate exercise of his right, because he can always manifest his opposition to any one candidate by voting for some other.—(Rex *vs.* Monday, Cowper, Lord Mansfield said the only way of voting against one was to vote for another.)

"Finally, it seems to the committee that there is no reason why a person who votes for an ineligible candidate should not be put upon the same footing with one who does not vote at all, as in both cases the parties show a disposition to prevent an election, and both of them show an unwillingness to perform their duty by aiding to promote those elections which are absolutely essential to the existence of the government. For if every voter refrained wholly from voting, or voted for an ineligible candidate, the result would be the same—no choice; and although it is true that no penalty is attached by law to a neglect of this obligation of voting, yet the obligation is not the less plain for that; and the committee believe it to be a duty too important to be neglected and too sacred to be trifled with by voting for fictitious persons or ineligible candidates. * * * The voter who puts into the ballot-box a blank piece of paper as clearly indicates his opposition to all the candidates as he who puts in a vote for an ineligible candidate; and there seems to be no reason why the opinion of the one should not be entitled to consideration as well as that of the other."—(Report agreed to April 10, 1849. See Cushing, Reports Contested Election Cases, Mass., page 576.)

In Indiana the same doctrine has been established by two decisions of the court in the cases Gulick *vs.* New (14 Ind., 927) and Carson *vs.* McPhetridge (327). In the former case the court say:

"It being conceded that the votes cast for Wallace were powerless and frui effecting the main end arrived at—that is, in electing him—we are still asked t that they were so far effective as to prevent the election of any other person; tl were, so far as affirmative results were involved, thrown away, but that negativ were operative. We are reminded that in our form of government the majorit rule, and that if the course indicated is not followed a majority of the voters disfranchised, their voice disregarded, and their rights trampled under foot choice of a minority listened to. True, by the constitution and laws of this S voice of a majority controls our elections, but that voice must be constitution legally expressed.

"Even a majority should not nullify a provision of the constitution, or be pe at will to disregard the law. In this are the strength and beauty of our institution pose a majority should persist in voting for a man totally ineligible to take the sheriff; what would be the result? As he could not hold the office, either the one of holding, receiving the next highest vote, would, as contended by the appel entitled to the office, or there would be a vacancy, as insisted by the appellee. the proceedings should result in creating a vacancy; then it would remain, greatl detriment of public and private interests, or it would, under the statute, hav filled by the action and choice of perhaps two men, which might be, possibly, i conflict with the choice of that majority in every respect. Then, while it is tr the votes of a majority should rule, the tenable ground appears to be that if the n should vote for one wholly incapable of taking the office, having notice of suc pacity, or should perversely refuse, or negligently fail to express their choice although a minority, who should legitimately choose one eligible to the position be heeded. Suppose that eight years ago, at the first election under our new c tion, when nearly all the offices in the State were to be filled, a majority of the v the State, and in the several districts and counties, had voted for persons wholl gible to fill the several offices, would those offices have thereby remained vacant? that majority, by persevering in that course, have continued the anarchy which have resulted from such action? Or, rather, is it not the true theory that those in accordance with the constitution and the law should control even a majority w fail so to act? Whether the same reasoning should hold good where the ineli should arise out of some cause other than a constitutional prohibition is a ques are not now called upon to decide."

The majority of the court held that the voter must take notice of the disquali of the candidate, and that votes cast for a candidate in fact disqualified must be out, whether the voters knew of the disqualification or not. Judge Perkins di upon this point, but affirmed the general doctrine, as follows:

"1. Where, at an election, there are opposing candidates for an office, and the date receiving the highest number of votes is ineligible, but, from a fact or cause the voters did not and were not bound to know, the result is a failure, and g candidate a right to the office, and should be followed by another election.

"Probable examples, under this proposition, of cases where the voters might n knowledge, viz, infancy of candidate, non-residency, want of naturalization, not sex, not of requisite degree of white blood, not in existence. This last was the the case cited from 38 Maine R., app. There a portion of the people by mistak for a person not in being. The case of the State *vs.* Swearinger (12 Ga. R., 23, case of non-residency.

"2. Where the voters at the election do know, or are legally bound to know, so law, they are held to know of the ineligibility of a candidate, the election does no in a failure; but, in such case, the eligible candidate receiving the highest nu votes is legally elected and entitled to the office.

"Against this proposition we have not found a single authority. Those relie such by the court below were the cases in 38 Maine R. and 12 Ga., *supra*, and Th *vs.* Giles (1 Chand. Wis. R., 112.)

"Of the case in Maine, we have said enough above.

"Of the cases in Georgia and Wisconsin, it may be remarked that neither of t volved the point now under consideration, and what is said upon it is mere *dic* neither of the cases cites a single authority.

"The point involved in the Georgia case was whether a certain corporate town State could elect to office in it a person not residing within the corporate limits, was held that it could. This closed the case.

"The point involved in the Wisconsin case was this: The constitution, article tion 4, provided that sheriffs should be ineligible for two years next succeedi

ı of their offices. A sheriff, in office at the time the constitution was adopted, his own successor under the constitution; and it was held that he was legally d that the disability imposed by the constitution related only to elections and under the constitution. The decision of this point disposed of the case; and l beyond it, as in the Georgia case, if not improperly, but still is very loosely ıly said, and is not binding as authority.

ile there are no authorities adverse to the second proposition above laid down, lqud of them vindicating its correctness. As the attention of the court below pear to have been called to them, we shall here indicate where they may be examined.

ant, a late accurate English writer on corporations, at page 208, says: 'As ated, a disqualification, patent or notorious, at once causes the votes given for ıte laboring under it to be thrown away; the same would probably be held to where the electors had the means of knowledge of the candidates' qualifica- contrary, and might have ascertained the facts if they had pleased.' Numer- ·e cited to sustain these positions.

Cushing, in his American work on the Law of Legislative Assemblies, at pages ı down the same doctrine as deducible from the decided cases.

the same ineligibility of a candidate arises from his holding or having held a e, the people within the jurisdiction of such office are held in law to know— ble with notice—of such ineligibility; the votes given for such candidate are ;, and his highest eligible competitor is elected."—(Grant on Corp., *supra*, Biddle *vs.* Willard, 10 Ind. R., 62, on page 68.)

ımed that in general a certain number of persons less than a majority of a or any other legal elective body, is competent for the transaction of business. pon this point, Cushing's *Lex Parliamentaria*, section 247, says:

umber may be precisely fixed in the first instance, or some proportional part , leaving the particular number to be afterward ascertained, with reference to ɔly; and this may be done either by usage or by positive regulation; and if mined, it is supposed that a majority of the members composing the assembly ı quorum."

ıave before seen that, by the constitution of North Carolina, either house of ure may proceed to the transaction of public business, if a majority of the ect are present. And if a quorum are present there may be an election by ers as choose to vote. This point was decided in England in the case of Old- ainwright (2 Burr., 1017), and in this country in Commowealth *vs.* Green (4 31), where the court charge the jury as follows:

there is a quorum of members present, the moderator can only notice those ly vote, and not those who do not choose to exercise their privilege of voting. ,' says Lord Mansfield, 'electors are present and do not vote at all, they vir- iesce in the election of those who do.' And with this principle agrees one of the general assembly itself, which must be familiar to every member: 'Mem- :th rule) ought not, without weighty reasons, to decline voting, as this practice ı the decision of very interesting questions to a small proportion of the judi- lent members, unless excused from voting, must be considered as acquiescing ıjority.'

not only the doctrine of the common law, of the written law, as you have is the doctrine of common sense; for without the benefit of this rule it would mpossible, certainly very inconvenient, to transact business in a large delib- :mbly. * * * This, gentlemen, has been stigmatized as a technical rule tion, and intendment of law. It is sufficient for us that it is a rule of law. We e wiser than the law. * * * Nor can we know anything of any fancied ontradistinguished from the law. The law is the equity of the case, and it considered under the most awful responsibility by the court and the jury. In , a court and a jury can never be better employed than when they are vindi- :afe and salutary principles of the common law."

me effect, in the act of Congress before quoted, which declares that the per- ıll receive a "majority of all the votes cast" shall be declared elected. Does ıld good in case of votes for a disqualified candidate, as well as in the case of ɔt actually voting? The unanimous opinion of the court in the case of Tay- or of Bath, before quoted, was that—

electors vote for a person not qualified, it is the same thing as if they had ɔtes at all; in which case it is not disputed that silence was a constructive

ı *vs.* Coaks, before cited, Lord C. J. Campbell said:

is the law, both the common law and parliamentary law, * * * that if will vote for a man who he knows is ineligible, it is as if he did not vote at

This question is also answered in the affirmative by an American work of standard authority, as follows:

"After an election has been properly proposed, whoever has a majority of those who vote, the assembly being sufficient, is elected, although a majority of the entire assembly altogether abstains from voting; because their presence suffices to constitute the elective body, and if they neglect to vote it is their own fault, and shall not invalidate the act of the others, but be construed an assent to the determination of the majority of those who do vote. And such an election is valid, though the majority of those whose presence is necessary to the assembly protest against any election at that time, or even the election of the individual who has the majority of votes; the only manner in which they can effectually prevent his election is by voting for some other qualified person."—(Angell & Ames on Corporations, ch. 4, sec. 6, and cases there cited; Brooks *vs.* Young, 12 Grattan, 303; State *vs.* Lehre, 7 Rich., 234; King *vs.* Monday, 2 Cowper, 537; Oldknow *vs.* Wainwright, 2 Burr., 1017; and Crawford *vs.* Powell, 2 Burr., 1016).

This is also in harmony with the act of Congress before quoted.

Inquiry has been suggested on the point whether, in the cases supposed, the person having the legal votes may be deemed elected, although the number of votes cast for him be less than the majority of a quorum.

To what has been above stated, and which may be applied to this question, the following additional reasons may be given to show that in law there is no sufficient ground for this objection:

First, in no one of the cases cited, either in argument of counsel or opinion of the judge, do we find that this point has been raised or suggested, as it seems probable it would have been had it been valid; or, second, we find at least two cases (King *vs.* Blissell and King *vs.* Monday) where, if this objection had been raised and sustained, it would have determined the case, but the point was not made. Third, in two cases the judges incidentally, but unequivocally, deny the truth of this objection.

In 14 East's Reports, page 599, note "*d*," on the case of Taylor *vs.* Mayor of Bath (M. 15, Geo. II.), it is said:

"Taylor moved a mandamus to be admitted into the office of a common councilman of the corporation of Bath.

"The defendant returned *non fuit electus.* * * * It appeared in evidence at the trial that, by the charter, the election of common councilmen is to be by the mayor, recorder, and aldermen, or the major part of them then present, and the mayor and twenty-seven aldermen being assembled for this purpose—Biggs had 14 votes, Taylor 13, and Kingston 1."

In 2 Cowper, 537, in reference to the above case, it is stated:

"Twenty-eight electors assembled; 14 voted for A (Biggs), 13 for B (Taylor), and 1 for C (Kingston). A was unqualified, and his incapacity known to the electors at the time."

Lee, chief-justice, in his directions to the jury said:

"That the votes given to A, with notice of his incapacity, were thrown away."

It afterwards came before the court (on motion for new trial), when Lee, C. J., compared it to voting for a dead man, and held that B, who had the 13 votes, was duly elected. And Justice Page (one of the court) said:

"That in such a case a minority of 2 only would have been sufficient to elect the other candidate."

And this where the "majority of a quorum" was 8.

The case of King *vs.* Blissell was a motion for a new trial on an information in the nature of a *quo warranto* against the defendant for acting as alderman at Portsmouth, and a verdict had been given for the Crown on two material issues. Pike and Blissell were adverse candidates. At the election the mayor only voted for Blissell, while three aldermen voted for Pike; but the mayor gave notice to the aldermen that Pike was incapacitated to be elected because he held the office of chamberlain, which was incompatible. Lord Mansfield, addressing the counsel for the Crown, who was arguing that the disqualification was not notorious, said:

"Do you doubt that, if he is really disqualified, whether such disqualification is notorious or not, that the votes given for him are thrown away? In another jurisdiction, if the disqualification is notorious, it does more—it elects the other party; but of the law in this case you can have no doubt."—(Heywood on Elections, page 533, and Wilson's Digest of Parliamentary Law, page 111.)

In this case 2 was a majority of a quorum, yet Lord Mansfield said if Pike was notoriously disqualified, Blissell, who received 1 vote, was elected, and "of the law in this case you can have no doubt."

An examination of the opinion of the judges in 25 Maine Rep., 567, throws light upon the above opinion. There the governor submitted the following questions:

1. Whether the governor and council in counting votes for county officers, under the

statutes of that State, had power to receive from the town canvassers evidence to contradict the return made by them?

2. Whether the governor and council could receive an amended return from the town canvassers?

The judges, after citing the statutory provisions, answered as follows:

"The powers conferred upon the governor and council are specific and precise; and it is believed that it would be irregular to go beyond them, or in any manner to deviate from them. If they could receive evidence that the certificates were erroneous in one particular they might with equal propriety do so in another, and so exercise the powers of judges of those elections generally, and without restriction."

In other words the duty cast upon the governor and council was purely ministerial. They were to canvass the election from the returns and had no power to inquire beyond them. This was the ground upon which the opinion in the 38 Maine Rep. rested, as is evident from the fact that in the opinion in the 38th the judges refer to the opinion in the 25th Maine Rep. as conclusive of the questions then presented. In the opinion in 38 Maine the judges say the only duty cast upon the governor and council is to "open and compare" the copies of the records of the votes given, and from such comparison to ascertain and determine who had been elected. In other words, the statute did not make the governor and council the judges of the election, but merely cast upon them a specific ministerial duty, which performed, their power was at an end. This act had been performed by the former governor and council, who had declared that Abel C. Dinslow was elected. Consequently the then governor and council had no power to revise such former determination and declare that another was elected. And the precise and express ground upon which the opinion was given was that Dinslow having been elected, and there being no such man in existence, the office was vacant. It is evident that these opinions have no application to a case like the one under consideration, where the Senate is "the judge" of the election and is not restricted, as the governor and council in the Maine cases were, to a performance of the mere ministerial duty of declaring who appeared by the certificate to be elected.

Saunders *vs.* Haynes (13 Cal., 145), was a proceeding to contest the election of the defendant Haynes as judge of the district court for the eighth district in California.

The facts were these: Turner and Haynes were competing candidates at the election, and Turner received the larger number of votes, but the certificate was delivered to Haynes upon the assumption that Turner was ineligible because of his holding a lucrative office under the United States. The court held that Turner was not ineligible, and that, of course, ended the case and entitled Turner to the office. In the opinion of the court, it is said, *obiter dictum*, that if Turner had in fact been ineligible Haynes would not have been elected; and the case of State *vs.* Giles (1 Chand. Wis., 112) is cited as sustaining that principle. With the opinion and decision in Saunders *vs.* Haynes we fully concur. But the question involved in Mr. Abbott's claim to a seat, viz, that the electors knew the candidate to be disqualified, was not averred, and was not involved, because the fact did not exist in that case. The court held that Turner was not ineligible. Of course, the electors did not know a fact that did not exist.

Commonwealth *vs.* Cluley (56 Penn. St., 270), was a rule on the relation of McLaughlin against Cluley to show cause why a *quo warranto* should not issue against Cluley, to test his right to the office of sheriff of Allegheny County. At the election, October 9, 1866, Cluley received 19,915 votes and McLaughlin 12,925 votes for the office of sheriff. The suggestion rested upon the allegation that Cluley was ineligible at the time of the election, but it did not appear that the electors had notice of the disqualification; nor did it appear that, if the votes for Cluley were thrown out, McLaughlin was elected. The case turned upon the precise point that, inasmuch as it was not alleged that throwing out Cluley's votes, McLaughlin had a majority, therefore it did not appear that McLaughlin had such an interest in the question as would enable him to contest the election. It is true that the court, speaking *obiter dictum* in regard to a popular election by ballot, expressed the opinion that McLaughlin was not elected. But the court fully approve of the English rule, that at an election *viva voce*, by a limited number of electors, the votes given for a candidate known to be ineligible are thrown away.

The court says:

"There is more reason for this in England, where the vote is *viva voce*, and the elective franchise belongs to but few, than here, where the vote is by ballot, and the franchise well-nigh universal. In those cases the notice was brought home to almost every voter, and the number of electors was never greater then three hundred, and generally not more than two dozen. Besides, a man who votes for a person with knowledge that the person is incompetent to hold the office, and that his vote cannot, therefore, be effective, that it will be thrown away, may very properly be considered as intending to vote a blank, or throw away his vote.

"But the present relator suggests no such cause. He does not even aver that, if the votes given for Cluley were thrown out, he received a majority, though doubtless such was the truth. He has, therefore, exhibited no such interest as entitled him to be heard."

Without considering or quoting from the very able dissenting opinion of Chief-Justice Thompson in this case, we think it quite evident that the majority of the court have laid down principles upon which Abbott is entitled to his seat. Indeed, Abbott's case is precisely that in which, according to the opinion of the court, those who voted for Vance "may very properly be considered as intending to vote a blank, or throw away (their votes.") The election of Senator in North Carolina is made by two bodies, numbering, in the aggregate, less then two hundred, voting *viva voce;* and in this case those who voted for Vance voted *viva voce* for a person known by them to be disqualified.

These are the only American decisions supposed to conflict with the principle herein maintained which have been brought to the notice of your committee. In neither of these cases was the precise point now under consideration involved, and in no one of these cases is the principle of common and parliamentary law that a *viva voce* vote given for a person known by the elector to be disqualified is thrown away asserted, or even suggested to be unsound. On the contrary, in the Pennsylvania case, State *vs.* Cluley, as we have shown, the correctness and justness of this principle are expressly declared.

There are but two cases, so far as your committee are informed, in which the election of a Senator has been contested upon the ground of ineligibility at the time of the election—that of Gallatin from Pennsylvania and Shields from Illinois. And an examination of these cases will show that in neither of them was the point now made either involved or considered.

In Gallatin's case (1 Cont. Elec. in Congress, 854) the proof showed that when Gallatin was first mentioned as a candidate he expressed his opinion that his citizenship did not entitle him to be elected. Henry Kammerer testified that, at a meeting of some of the members of the legislature to agree upon a candidate for Senator, he heard Mr. Gallatin say:

"As for my name, it is out of the question; I have not been a citizen long enough to entitle me to serve in that station."

That at a second meeting it was stated, though not by Gallatin, that the doubt about his citizenship was then put to rights; and then it was almost unanimously agreed to put up Mr. Gallatin's name. Mr. Kammerer also stated the ground upon which Mr. Gallatin had at first supposed his citizenship did not entitle him to be a Senator. He says that the day after Gallatin's election he had a conversation with him, in which Gallatin said he had first declared himself ineligible "under a mistaken idea that it was necessary for him to have been nine years a citizen of the State of Pennsylvania but that upon examining the Constitution he found that to have been nine years a citizen of the United States was sufficient, and that he had been above nine years a citizen of the United States, or words to that effect."

From this it is evident that at the time of his election Mr. Gallatin, and those by whose votes he was elected, believed that he had been for more than nine years a citizen of the United States. And although the Senate decided that he had not been a citizen of the United States for nine years prior to his election, and unseated him for that reason, yet it was nowhere suggested, either by proof or on the argument, that the electors knew him to be disqualified at the time they cast their votes for him.

Shields's case (Cont. Elec. in Congress, 1834 to 1865) is in all material respects like that of Gallatin. He had not, in fact, been nine years a citizen of the United States and was unseated for that reason. But it was not pretended that the electors knew his disqualification.

Therefore neither of these cases has any bearing upon the question now under consideration.

Your committee have also been referred to the case of Yulee *vs.* Mallory, same volume page 608. In that case, on the first day of the election—January 13, 1851—the general assembly of the legislature of Florida met in convention of the two houses, and proceeded to vote *viva voce* for Senator. Twenty-nine votes were given for Yulee, and votes were given for "blank." Thereupon the presiding officer declared no choice had been made. They then proceeded to a second and third vote, with substantially the same result. On the 15th of January they met again, and, on a call of the roll, thirty-one members responded "S. R. Mallory," and 27 votes were given to Yulee and other, whereupon the presiding officer declared Mallory to be duly elected. From this statement it might seem that Yulee's case raised the question now under consideration. But the brief, though very clear and able report of Mr. Bright, from the select committee in that case, shows the contrary. The two houses of the Florida legislature had, in 184[illegible] passed a concurrent resolution, as follows:

"*Resolved,* That a majority of all the members-elect composing the two houses of

general assembly shall be necessary to determine all elections devolving upon that body."

Though the validity of this resolution was attacked by Mr. Yulee, the committee held that the resolution had been duly passed; that it had never been rescinded; that it was consistent with the Constitution of the United States empowering the legislature of a State to regulate the time, place, and manner of electing a Senator; and that it was conclusive against the right asserted by Yulee. And the resolution reported by the committee declaring that Mallory had been duly elected passed in the Senate without a dissenting vote.

In the report the committee, after determining that under the resolution of the legislature above quoted Yulee was not entitled to a seat, say:

"This being the view which the committee take of the case, there is no necessity for pursuing the subject further, since Mr. Yulee did not obtain votes sufficient to elect him."

The committee then notice the fact that the members of the legislature evidently voted upon the supposition that the resolution was valid, and say that—

"Even conceding the resolution to be invalid, yet the members in the election were misguided by what they had a right to consider as authority, and must have acted under a misconception of right which stood as they supposed unquestioned. If this be so, they stand substantially in the condition of an elector who votes for a person disqualified believing him to be qualified. The vote in such a case, though unavailing, is not rejected from the count.

"The only remedy which we can see for an election carried on through misapprehension from such well-founded causes is to set it wholly aside and open the way to a new choice; but in our view of the case there is no occasion to consider what ought to be done upon such a state of facts."

The distinction between votes cast with knowledge or in ignorance of the disqualification of the candidate voted for is inferable from the report in Yulee's case. And the doctrine maintained by that report, that an election carried on under honest misapprehension in regard to then existing facts ought to be set aside and a new election ordered, is conceded.

It was strongly contended before your committee that the case under consideration falls fairly within this equitable principle; because it was said that all the State officers and judges of North Carolina had been elected while under disability imposed by the fourteenth amendment, and Congress had subsequent to their election removed their disabilities and enabled them to hold their offices; and your committee were referred to the act of June 25, 1868 (15 Statutes at Large, 366), by which "all officers elected at the election commencing the 4th day of February, 1868, in the State of Alabama," and who had not publicly declined to accept the offices to which they were elected, were relieved of their disabilities. From these facts it was contended that the members of the legislature who voted for Vance might well believe, and it was said that in fact they did believe, that Congress would relieve Vance of his disability and that he would be admitted to his seat in the Senate.

This suggestion has some force, but a slight examination will show that it is rather plausible than sound. In the first place the case bears no resemblance to that supposed in the report in Yulee's case; because here there was no misapprehension as to any fact then existing. If the electors had supposed that Vance was not disqualified, though in fact he was, or had they believed that an act had already passed Congress relieving him from his disability, though such was not the case, then the electors would have acted under a misapprehension and honestly entertained the belief that Vance was eligible. But such is not the case. Every elector who voted for Vance knew that he was disqualified by the fourteenth amendment, and that his disability had not been removed. Every elector therefore knew when he gave his vote for Vance that, as the case then stood, such vote was thrown away. As well might a man claim exemption from the penalty imposed by a statute upon the ground that although he knew he was violating its provisions he expected the legislature would repeal it. It was the duty of that legislature to elect a Senator who, in virtue of that election, and without the aid of any other government, would be authorized to demand his seat as a Senator. To elect a disqualified candidate, and then refer it to Congress to remove his disqualifications or not, is to transfer the election from the legislature to Congress. In such case the legislature would in effect be nominating a Senator and submitting it to Congress to determine whether or not he should be a Senator. Put the case in the strongest possible light for Vance, still it must be admitted that the electors who voted for him knew that as the case then stood their votes were being thrown away; that without the action of Congress, which might or might not be interposed, the election was in violation of the Constitution; and up to the time when Abbott claimed his seat in this body, and up to the present hour, the votes given for Vance remain wholly inoperative, void, blanks in the

disabilities of members elected to the House of Representatives rest upon principles inconsistent with the conclusions of this report. To this two answers may be made: 1. The proceedings of Congress in relation to cases of election while reconstruction of the late rebel States was in progress can hardly be relied upon as settling principles by which either House of Congress ought to be bound in times of peace. The circumstances under which such legislation was had were exceptional, and the legislation itself ought not to stand as a precedent. 2. The bills which have passed were bills originating in the House of Representatives concerning members elected to that House, and although the Senate has concurred in the enactment of such laws it ought not to be regarded as settling principles by which the Senate must be bound in determining the election of its own members. Whenever the House of Representatives manifests its desire to seat a member, although it may require the enactment of a law by both Houses to accomplish the purpose, still the Senate in concurring in such enactment may be regarded as extending a courtesy to the House of Representatives rather than settling principles which will bind the Senate in relation to the election of its own members.

To recapitulate, in regard to the precise legal question involved in this case, viz, whether in an election *viva voce* the votes cast for a candidate known by the electors when they gave their votes to be disqualified are to be considered as thrown away and the qualified candidate next on the poll is to be declared elected, we have in favor of such a principle:

1. The uniform and unbroken current of decisions in the British Parliament from the earliest to the present time.
2. The unanimous voice of the English courts of law.
3. The express and well-considered decision of the supreme court of the State of Indiana in the case of Gulick *vs.* New (14 Ind. Rep., 927), and the case of Carson *vs.* McPheetridge (15 Ind. Rep., 327), applying the rule even to a popular election.
4. The authority of Cushing's *Lex Parliamentaria*, the best American work on the subject; Wilson's Digest of Parliamentary Law; Angell and Ames on Corporations, a work of standard authority; the precedent of the legislature of Massachusetts even in regard to a popular election of its members (*vide* Cushing's Reports of Contested Election Cases in Massachusetts, page 499; and another case, same report, 576).

And opposed to this principle in regard to an election *viva voce* we have absolutely nothing. Not a writer, English or American, not a decision of any court or *dictum* of any judge in either country has been cited condemning or denying this principle in regard to such an election; and, on the contrary, the court, in Com. *vs.* Cluley (56 Penn. St., 270), which is relied on as being opposed, expressly recognize and indorse this principle when applied to elections *viva voce* by a limited number of electors.

The cases which have been cited from the American reports and are relied upon as being opposed to this principle all related to popular elections by ballot, and not to elections *viva voce*. Yet even in those cases the element of knowledge that the candidate was disqualified did not exist, and therefore all that is said about it in those cases is *obiter dicta*.

A declaration from the bench is *obiter dictum*, and not binding as authority when it was unnecessary to a decision of the case in which it was made.

To illustrate, the Supreme Court of the United States in the Dred Scott case (19 Howard, 393), first determined that the circuit court of the United States had no jurisdiction in the case. That ended the matter. The decision of the court below had to be reversed for that reason. It was therefore *obiter dictum* for the court to proceed to decide questions which, decided either way, would not affect the judgment to be pronounced. Had the court in that case held that the Missouri compromise, so called, was constitutional, yet the decision, that is, the judgment, would have been the same.

The true rule upon this subject is given by Vaughan, C. J. (Vaughan, 382), as follows:

"An opinion given in court, if not necessary to the judgment given of record, but that it might have been as well given if no such or a contrary opinion had been broached, is no judicial opinion, nor more than a *gratis dictum*. But an opinion, though erroneous, concluding to the judgment, is a judicial opinion," &c.

To the same effect see Heath, J., in Hutchinson *vs.* Birch, 4 Taunton, 625; Pittsford *vs.* Plattsburg, 18 Johnson, 418.

Therefore all that was said by the judges in the American cases cited, which cases do not involve the element of knowledge of the incapacity of the candidate, is *obiter dicta*. But were it otherwise, and had those decisions been made in cases which showed that the disqualification of the candidate was known to the elector, still the fact that they relate only to popular elections by ballot would render them wholly inapplicable to the case now before the Senate.

Therefore it is submitted that upon reason and authority the votes cast for Mr. Vance with full knowledge on the part of the members of both houses of the legislature that

he was disqualified by the Constitution to serve in this body, ought to be considered as thrown away; and that, inasmuch as a majority of all the members elected to each house were "actually present," the election was legal, and that the qualified candidate receiving the highest number of votes, and a majority of all votes cast for qualified candidates, was duly elected. It is conceded that majorities have a constitutional right to govern in this country; but it is not conceded that even the majority of the legislature of a State may morally or constitutionally defeat government by refusing to elect Senators to serve in the Senate of the United States. In this case the majority had a right to elect a qualified person to the Senate; but, having waived their right by voting for a person known to be disqualified, as much as though they had refused to vote at all, or had voted for a man known to be dead, the minority who complied with the Constitution by voting for a qualified candidate may well be held to have expressed the will of the legislature. If the majority, being called upon, will not vote, they cannot complain that the election was decided by those who did vote, though a minority of the elective body. And voting for a person known to be disqualified is not voting. Such votes are void—no votes; and the highest number of votes cast, a quorum being present, must effect an election.

Therefore, in view of the premises, the minority of your committee recommend the adoption of the following resolution:

Resolved, That Joseph C. Abbott has been duly elected Senator from the State of North Carolina for the term of six years commencing on the 4th day of March, 1871, and that he is entitled to a seat in the Senate as such Senator.

MATT. H. CARPENTER,
B. F. RICE,
Minority of Committee.

THURSDAY, *April* 11, 1872.

On motion by Mr. Logan, the Senate proceeded to consider the following resolution, reported from the Committee on Privileges and Elections:

"*Resolved*, That Joseph C. Abbott, not having received a majority of the votes cast by the North Carolina legislature on the second Tuesday in November, 1870, for the office of Senator of the United States, is not entitled to a seat in said United States Senate as such Senator."

On motion by Mr. Carpenter to amend the resolution by striking out all after the word "resolved," and inserting in lieu thereof the following:

"That Joseph C. Abbott has been duly elected Senator from the State of North Carolina for the term of six years, commencing on the 4th day of March, 1871, and that he is entitled to a seat in the Senate as such Senator,"

After debate,

On motion by Mr. Edmunds (at 5 o'clock and 15 minutes) the Senate adjourned.

[The debate, including a speech by Mr. Logan, is found on pages 219–229 of the Appendix to the Congressional Globe referred to in the head-note.]

FRIDAY, *April* 12, 1872.

The Senate resumed, &c.

[The debate is found on pages 2387–2390 of the Congressional Globe referred to in the head-note. Mr. Carpenter's speech is found on pages 245–257 of the Appendix referred to in the head-note.]

MONDAY, *April* 15, 1872.

The Senate resumed, &c.

[The debate is found on pages 2431–2434 of the Congressional Globe referred to in the head-note. Mr. Thurman's speech is found on pages 234–245 of the Appendix referred to in the head-note.]

MONDAY, *April* 22, 1872.

The Senate resumed, &c.

[The debate is found on page 2639 of the Congressional Globe referred to in the head-note. Mr. Pool's speech is found on pages 272–279 of the Appendix referred to in the head-note.]

TUESDAY, *April* 23, 1872.

The Vice-President announced that the morning hour had expired, and called up the unfinished business of the Senate at its last adjournment, viz, the resolution reported from the Committee on Privileges and Elections declaring Joseph C. Abbott not entitled to a seat in the Senate as a Senator from the State of North Carolina; and the Senate resumed the consideration of the said resolution.

* * * * * * *

On the question to agree to the amendment proposed by Mr. Carpenter to amend the resolution, viz: Strike out all after the word "resolved," and in lieu thereof insert:

"That Joseph C. Abbott has been duly elected Senator from the State of North (olina for the term of six years commencing on the 4th day of March, 1871, and tha is entitled to a seat in the Senate as such Senator,"

After debate,

It was determined in the negative—yeas 10, nays 42.

On motion by Mr. Carpenter, the yeas and nays being desired by one-fifth of the ators present,

Those who voted in the affirmative are Messrs. Ames, Chandler, Cragin, Gilbert, H Nye, Osborn, Patterson, Pool, and Sawyer.

Those who voted in the negative are Messrs. Alcorn, Bayard, Blair, Buckingham, (well, Cameron, Casserly, Clayton, Cooper, Davis of West Virginia, Edmunds, Fer Ferry of Connecticut, Ferry of Michigan, Frelinghuysen, Goldthwaite, Hamilto Maryland, Hamlin, Hill, Hitchcock, Johnston, Kelly, Logan, Morrill of Maine, M of Vermont, Morton, Pratt, Ramsey, Robertson, Schurz, Scott, Sprague, Stever Stockton, Sumner, Thurman, Tipton, Trumbull, Vickers, West, Windom, and Wr

So the motion was not agreed to; and

On the question to agree to the resolution reported by the Committee on Privi and Elections, it was determined in the affirmative.

So it was

Resolved, That Joseph C. Abbott, not having receiveda majority of the votes ca the North Carolina legislature on the second Tuesday in November, 1870, for the of Senator of the United States, is not entitled to a seat in said United States Sena such Senator.

[The debate is found on page 2676 of the Congressional Globe referred to in the l note. Mr. Carpenter's speech is found on pages 328–334 of the Appendix referred the head-note.]

COMPENSATION OF MR. ABBOTT.

WEDNESDAY, *April* 24, 18

Mr. Morton, from the Committee on Privileges and Elections, reported the follo resolution; which was read the first and second times, by unanimous consent:

"*Resolved*, That Joseph C. Abbott, late contestant for a seat in this body from State of North Carolina, be allowed his salary from 4th of March, 1871, up to the 2 April, 1872, and one mileage each way."

The Senate proceeded to consider the said resolution as in Committee of the W and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time, by unanimous consent.

Resolved, That it pass.

CREDENTIALS OF MR. RANSOM.

MONDAY, *February* 5, 18

The Vice-President laid before the Senate the credentials of Matt W. Ransom, e a Senator by the legislature of the State of North Carolina for the unexpired port the term commencing March 4, 1871; which were read.

Ordered, That they be referred to the Committee on Privileges and Elections.

WEDNESDAY, *April* 24, 18

Mr. Morton, from the Committee on Privileges and Elections, to whom were re the credentials of Matt W. Ransom, elected a Senator by the legislature of North (lina for the term of six years commencing March 4, 1871, reported that upon exam tion the committee had found that the credentials were in due form, and recomme that Mr. Ransom be admitted to a seat in the Senate;

Whereupon

Mr. Ransom appeared, and the oaths prescribed by law having been administere him by the Vice-President, he took his seat in the Senate.

COMPENSATION OF MR. RANSOM.

FRIDAY, *April* 26, 187

Mr. Bayard submitted the following resolution; which was referred to the Commi on Privileges and Elections:

"*Resolved*, That the pay of the Hon. Matt W. Ransom, as a Senator from the Sta North Carolina, shall commence on the 4th day of March, 1871."

TUESDAY, *June* 4, 1872.

Mr. Thurman, from the Committee on Privileges and Elections, to whom was referred the resolution submitted by Mr. Bayard April 26, 1872, relative to the pay of Matt W. Ransom, a Senator from the State of North Carolina, submitted the following report:

The Committee on Privileges and Elections, to whom was referred the following resolution offered by the Senator from Delaware, Mr. Bayard, to wit:

"*Resolved*, That the pay of Matt W. Ransom as a Senator from the State of North Carolina shall commence on the 4th day of March, A. D. 1871,"

Report that the practice in each House of Congress seems to have been founded upon an interpretation of the act of July 12, 1862 (12 Stat., 624; Manual, 312), consistent with the resolution. As this interpretation has been practiced upon since 1862, and may be considered as within the spirit of the act aforesaid, your committee report back the resolution with a recommendation that it be passed.

O. P. MORTON.
A. G. THURMAN.
H. B. ANTHONY.
JOSHUA HILL.
M. H. CARPENTER.
JOHN A. LOGAN.
B. F. RICE.

The Senate proceeded to consider the said resolution as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time.

Resolved, That it pass.

[Forty-second Congress—Second and third sessions.]

S. C. POMEROY AND ALEXANDER CALDWELL,

of Kansas.

April 8, 1872, a report of a joint committee appointed by the Kansas legislature to inve charges of bribery and corruption connected with the Senatorial elections of 1867 and 1871 w sented and referred to the Committee on Privileges and Elections. Mr. Pomeroy had been e in 1867, and Mr. Caldwell in 1871. May 11, the Senate resolved that the committee be auth to investigate these elections. June 3, the committee reported in regard to Mr. Pomeroy's el that there was no evidence that Mr. Pomeroy had used money to influence any vote in his *except hearsay*, and that was plainly contradicted by direct testimony; that the charges of b and corruption against Mr. Pomeroy, connected with his election, totally failed to be sustai competent proof, but seem to have been urged for some purpose unknown to the committee b that of correcting existing evils. Two members of the committee did not concur in the la clusion. The committee reported the testimony taken, and asked to be discharged fro further consideration of Mr. Pomeroy's case.

February 17, 1873, the committee reported in regard to Mr. Caldwell's election that they "not doubt that money was paid to some members of the legislature for their votes, and promised to others which was not paid, and offered to others who did not accept it;" that it subject of discussion in the committee whether the offenses of Mr. Caldwell should be pu by expulsion, or go to the validity of his election, but that a majority were of opinion tha went to the validity of his election and had the effect to make it void. The committee sub the evidence taken and recommended the adoption of a resolution that Mr. Caldwell was no and legally elected. March 24, after long debate on the resolution, before a vote was take Caldwell resigned his seat.

February 10, 1873, on motion of Mr. Pomeroy, the Senate resolved that a select committee i gate charges of bribery and corruption in the Senatorial election held in January, 1873, rela the alleged purchase by Mr. Pomeroy of the vote of A. M. York, a State senator. (Mr. Po had been a candidate for re-election in January, 1873.) February 18, a memorial of B. F. Si was presented, praying that the committee be authorized to investigate certain other g charges of bribery against Mr. Pomeroy. The Senate resolved that the committee be direc inquire into these general charges. March 3, the committee reported the evidence, and th clusions that "none of the charges preferred by Mr. Simpson were sustained"; and that, in to the charges of Mr. York, he "had not sustained his charge by sufficient proof, contradicte was by the evidence of Mr. Page and Mr. Pomeroy." One member of the committee did not with the report. No further action on the subject was taken.

The history of the case here given consists of a transcript of the proceedings of the Senat ing to it from Senate Journals, 42d Cong., 2d and 3d sess., and the reports of the committees ences to which are given in foot-notes.

Special references to the debates of each day are inserted below.

[Second session of the Forty-second Congress.]

TUESDAY, *March* 5, 1

Mr. Pomeroy submitted the following resolution; which was considered by mous consent, and agreed to:

"*Resolved*, That all papers and communications relating to the election of Senat the State of Kansas in the years 1867 and 1871 be referred to the Committee on leges and Elections, and that they be directed to report to the Senate, after examin what action, if any, should be taken by the Senate in relation thereto."

Mr. Pomeroy presented a printed paper, purporting to be the report of a commi investigation of the legislature of Kansas on the Senatorial elections in that State years 1867 and 1871, and moved that the same be referred to the Committee on leges and Elections.

The reference of the paper being objected to,

Ordered, That the paper lie on the table.

On motion by Mr. Hamlin that the Senate reconsider its vote agreeing to the tion of Mr. Pomeroy in reference to the election of Senators in the State of Kan 1867 and 1871, it was determined in the affirmative; and,

On motion by Mr. Hamlin,

Ordered, That the resolution lie on the table.

[The debate is found on pages 1410, 1411 of the Congressional Globe, 2d se Cong., part 2.]

MONDAY, *April* 8, 1

The Vice-President laid before the Senate a report of a joint committee appoin the legislature of Kansas to investigate charges of bribery and corruption connecte the Senatorial election in that State in 1867 and 1871; which was referred to the mittee on Privileges and Elections.

Mr. Pomeroy presented a report of a joint committee appointed by the Kansas legislature to investigate charges of bribery and corruption connected with the Senatorial elections of 1867 and 1871 in that State; which was referred to the Committee on Privileges and Elections.

SATURDAY, *May* 11, 1872.

Mr. Morton, from the Committee on Privileges and Elections, reported the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Committee on Privileges and Elections be authorized to investigate the election of Senator C. S. Pomeroy by the legislature of Kansas in 1867, and the election of Senator Alexander Caldwell in 1871; that the committee have power to send for persons and papers; that the chairman or acting chairman of said committee or any subcommittee thereof have power to administer oaths, and that the committee be authorized to sit in Washington or elsewhere during the session of Congress and in vacation."

[The debate is found on pages 3316, 3317 of the Congressional Globe, 2d sess. 42d Cong., part 4.]

MONDAY, *May* 13, 1872.

Mr. Morton presented a petition of citizens of Kansas, praying an investigation of the election of Hon. Alexander Caldwell as Senator from that State.

Ordered, That it lie on the table.

* * * * * * *

Mr. Morton, from the Committee on Privileges and Elections, reported the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Committee on Privileges and Elections be authorized to employ a stenographer in the investigation which it has been directed to make into the Kansas Senatorial elections."

Mr. Morton, from the Committee on Privileges and Elections, reported the following resolution; which was read the first and second times, by unanimous consent:

"*Resolved*, That the sum of $10,000 be appropriated from the contingent fund of the Senate, or so much thereof as may be necessary, to defray the expenses of the investigation into the Kansas Senatorial elections, ordered by the Senate to be paid upon vouchers approved by the chairman of the Committee on Privileges and Elections."

The Senate proceeded to consider the said resolution as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time, by unanimous consent.

Resolved, That it pass.

MONDAY, *June* 3, 1872.

Mr. Logan, from the Committee on Privileges and Elections, who were instructed by a resolution of the Senate of May 11, 1872, to investigate the election of the Senators from Kansas, submitted a report (No. 224) thereon.

REPORT OF COMMITTEE ON ELECTION OF MR. POMEROY IN 1867.*

IN THE SENATE OF THE UNITED STATES.

JUNE 3, 1872.—Ordered to be printed.

Mr. Logan, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom was referred a certified copy of the report of the joint committee of investigation appointed by the Kansas legislature of 1872 to investigate all charges of bribery and corruption connected with the Senatorial elections of 1867 and 1871, met on the 20th of April, 1872, and directed the clerk of said committee to prepare an abstract of the evidence furnished by the said report of the legislature of Kansas. On the 23d of April your committee met and adjourned over until the 24th, when, on account of sickness in the family of Senator Thurman, the case was postponed until he should return from a visit home.

On May the 11th your committee met and adopted the following resolution:

"*Resolved*, That the chairman of the committee do ask the Senate for leave to send for persons and papers in reference to the elections of both 1867 and 1871, and that the committee have leave to sit in the vacation, and to take testimony by either the whole committee or a subcommittee, at Washington or elsewhere; that, in asking for authority as aforesaid, the chairman be requested to state that the committee express no opinion upon the subject."

* Taken from Senate Reports, 2d sess. 42d Cong., vol. 1, No. 224. The testimony accompanying the report is here omitted.

On the same day the Senate, in response to the request of the committee, adopted following resolution:

IN THE SENATE OF THE UNITED STATES, *May* 11, 1872

Resolved, That the Committee on Privileges and Elections be authorized to inve gate the election of Senator S. C. Pomeroy, by the legislature of Kansas, in 1867, and election of Senator Alexander Caldwell in 1871; that the committee have powe send for persons and papers; that the chairman, or acting chairman, of said commit or any subcommittee thereof, have power to administer oaths; and that the commi be authorized to sit in Washington, or elsewhere, during the session of Congress an vacation.

Attest:

GEO. C. GORHAM,
Secretar
By W. J. McDONALD,
Chief Cler

On the 13th of May your committee met, and, in accordance with the authority ferred upon them by the resolution of the Senate, directed all witnesses in referenc the charges against S. C. Pomeroy, Senator from the State of Kansas, to be summone appear forthwith and testify in reference to said charges, and also the clerk of the c mittee was directed to make inquiry who is the present custodian of the books and pa of the late Perry Fuller, of Washington, D. C., and, if such information can be had, the party having possession of his account-books, check-books, and bank-books, for time between December 1, 1866, and February 1, 1867, be summoned to appear them.

On motion, the committee adjourned subject to the call of the chairman.

On the 21st day of May your committee were called together for the purpose of ceeding with the examination, a portion of the witnesses having arrived.

Senator Caldwell, of Kansas, appeared and urged an early examination and disposi of the question in reference to his election in 1871. Your committee, however, con ering the time too short during the sitting of Congress to thoroughly investigate b Senatorial elections, concluded to proceed only with the investigation of the electio Mr. Pomeroy in 1867, leaving the case of Mr. Caldwell to be examined during the v tion of Congress, or at such time as may be agreed upon by your committee.

The examination of the witnesses in the case of Mr. Pomeroy was then proceeded w and continued from day to day until the case was closed.

Your committee respectfully submit all the testimony, and report as follows:

1. That it appears from the evidence that two United States Senators were electe the Kansas legislature in 1867, Mr. S. C. Pomeroy for a full term of six years, and Ross for an unexpired term of four years from the 4th day of March, 1867; that the didacy of Mr. Pomeroy was generally understood by the people of Kansas during election of members of the legislature who were to elect Senators for the State of Ka and that the election of Mr. Pomeroy as one of those Senators was generally conce that all candidates against Mr. Pomeroy for the long term withdrew from the con save Mr. A. L. Lee. Mr. Pomeroy, in joint convention of the two houses of the l lature, received 84 votes; Mr. Lee received 25 votes; the disparity of votes being so g as to preclude of itself the idea that the election of Mr. Pomeroy, against the will o constituents of those who voted for him, was procured by corrupt means.

2. There is no evidence that Mr. Pomeroy, or any one for him, used any mone other valuable thing to influence any vote in his favor, or in any manner to bring a his election, except hearsay, and this is plainly contradicted by the direct testimo the parties either to whom or by whom it is alleged such considerations were given.

3. The evidence that Mr. Pomeroy's canvass for Senator cost him considerable m is clearly shown to be the expenses paid by him for himself and friends during the S torial canvass, for hotel accommodations, disconnected entirely with the vote of member, either for or against him.

4. The evidence shows that some of the friends of Mr. Pomeroy have been appoi to office under the Government of the United States, but fails to show that they appointed in consideration of any vote or any influence used by them in procuring election of Mr. Pomeroy; and your committee beg leave to say that they can fin fault with Mr. Pomeroy or any one else (when they recommend for appointme office) that they recommend their friends instead of their enemies.

5. It appears from the evidence that Mr. Pomeroy engaged, for a compensation made, the services of the Lawrence State Journal to advance the interests of the Re lican candidates and of the Republican party in the State of Kansas in the year 1866; it also appears that said Journal broke its engagement, and supported the Conserv or Democratic ticket.

Your committee, therefore, after maturely considering the testimony adduced before them, are clearly of the opinion that the charges of bribery and corruption against S. C. Pomeroy, connected with his Senatorial election by the Kansas legislature in 1867, totally fail to be sustained by any competent proof, but seem to have been urged for some purpose, unknown to your committee, beyond that of correcting existing evils. Your committee, therefore, beg to be discharged from the further consideration of the same.

O. P. MORTON,
B. F. RICE,
JOHN A. LOGAN,
H. B. ANTHONY,
MATT. H. CARPENTER,
Committee.

We concur with the other members of the committee in the finding that there is not evidence before us sufficient to show that Mr. Pomeroy's election was procured by the use of corrupt means; and having no definite, reliable information leading to the conclusion that further investigation would develop such evidence, we concur in the recommendation that the committee be discharged from the further consideration of the subject. Here we think that our duty ends. We do not think it proper to impugn the motives of those who urged this investigation. The subject was brought to the notice of the Senate by the general assembly of Kansas, and, as it seems to us, a proper respect for that body precludes an imputation of improper motives.

We cannot, therefore, concur in the last paragraph of the report, and there are other passages that do not meet our approval. For these reasons we have preferred to state our views in our own language.

A. G. THURMAN.
JOSHUA HILL.

[Third session of the Forty-second Congress.]

MONDAY, *February* 17, 1873.

Mr. Morton, from the Committee on Privileges and Elections, who were instructed by a resolution of the Senate to investigate the election of Alexander Caldwell, a Senator from the State of Kansas in 1871, submitted a report (No. 451) accompanied by the following resolution:

"*Resolved*, That Alexander Caldwell was not duly and legally elected to a seat in the Senate of the United States by the legislature of the State of Kansas."

REPORT OF COMMITTEE ON ELECTION OF MR. CALDWELL IN 1871.*

[The committee consisted of Messrs. Morton (chairman), Carpenter, Logan, Alcorn, Hill, Anthony, and Trumbull.]

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1873.—Ordered to be printed.

Mr. Morton, from the Committee on Privileges and Elections, submitted the following report:

On the 11th day of May, 1872, the Senate adopted the following resolution:

"*Resolved*, That the Committee on Privileges and Elections be authorized to investigate the election of Senator S. C. Pomeroy by the legislature of Kansas in 1867, and the election of Senator Alexander Caldwell in 1871; that the committee have power to send for persons and papers; that the chairman or acting chairman of said committee or any subcommittee thereof have power to administer oaths; and that the committee be authorized to sit in Washington or elsewhere during the session of Congress and in vacation."

In obedience to this resolution the Committee on Privileges and Elections have had under consideration the election of Alexander Caldwell to the Senate of the United States in January, 1871, have taken testimony, and beg leave to submit the following report:

It is testified by Mr. Len. T. Smith, a former business partner of Mr. Caldwell, his active friend at the time of his election and during this investigation, that he made an agreement with Thomas Carney, of Leavenworth, by which, in consideration that Mr. Carney should not be a candidate for United States Senator before the legislature of Kansas, and should give his influence and support for Mr. Caldwell, Mr. Caldwell should

*Taken from Senate Reports, 3d sess. 42d Cong., No. 451. The evidence accompanying the report is here omitted.

pay him the sum of $15,000, for which amount notes were given and afterward pai the same time taking from Mr. Carney a written instrument in which he pledged l self in the most solemn manner not to be a candidate for the office of Senator ir approaching election.

This instrument is in the words following:

"I hereby agree that I will not under any condition of circumstances be a candi for the United States Senate in the year 1871 without the written consent of A. (well, and in case I do to forfeit my word of honor hereby pledged. I further agree bind myself to forfeit the sum of $15,000, and authorize the publication of this a ment.

"THOS. CARNE

"TOPEKA, *January* 13, 1871."

Mr. Smith's testimony is fully corroborated by that of Mr. Carney, who admits execution of the paper, the making of the arrangement, the taking of the notes, the subsequent receipt of the money. The notes for the money were signed by Smith, but paid by Mr. Caldwell; and one of them, for $5,000, was made contin upon Mr. Caldwell's election. The substance of the whole agreement, only a pa which was expressed in the writing, was that Mr. Carney should not be a candidat the Senate against Mr. Caldwell, that he should use his influence for Mr. Caldwel to Topeka, meet the legislature, and do all he could to secure his election.

The first question to be considered is: Was this arrangement corrupt? Was i use of corrupt means on the part of Mr. Caldwell to procure his election? The com tee are of opinion that it was corrupt; was against public policy; was demoralizir its character; directly contributed to destroy the purity and freedom of election, not to be tolerated by the Senate of the United States as a means of procuring a se that body.

To understand the full nature of the transaction we must consider the characte position of Mr. Carney. He had been a governor of Kansas; he had once been el a Senator of the United States by the legislature of that State, but the election premature, being at the wrong session; he had been a candidate for the Senate at an time, and had come within 10 votes of being elected. He was well known throug the State, had a large body of active friends, many of whom were warmly devot his political fortunes. His being a candidate would greatly endanger the succe Mr. Caldwell, if not certain to result in his defeat. He was from the same city Mr. Caldwell, and his candidacy would be the more dangerous on that account. Mr. Caldwell agreed to give him $15,000 under this arrangement it was an attem purchase the votes of the friends of Mr. Carney. He doubtless expected that Mr. ney, through his influence over his friends, could bring them over to his support. would naturally become friends to the man with whom Mr. Carney was friendly. It at least, a tacit part of this arrangement that Mr. Carney should conceal the merc part of the transaction, and place his withdrawal from the canvass and his supp Mr. Caldwell upon personal and political considerations that were honorable to hi and would be attractive to his friends; and this he did. Mr. Carney went to To before the Senatorial election and remained there until it was over, working indu ously for Mr. Caldwell, and exerting all his personal and political influence to s his election. Looking at the transaction in its real character it was a sale upon the of Mr. Carney of the votes of his personal and political friends in the legislature, delivered by him to Mr. Caldwell as far as possible. If it were legitimate for Mr. well to buy off Mr. Carney as a candidate, it was equally legitimate to buy off a other candidates and have the field to himself, by which he would exert a quasi- cion upon the members of the legislature to vote for him, having no other cand to vote for. It was an attempt to buy the votes of members of the legislature, n bribing them directly, but through the manipulations of another. The purchase-m was not to go to them but to Mr. Carney, who was to sell and deliver them wi their knowledge. That Mr. Caldwell did procure the votes of members of the lature, friends of Mr. Carney, ignorant of the fact that Mr. Carney was making chandise of his political character and influence, and of their friendship for him, for w he was to receive a large sum of money, the evidence leaves no reasonable doubt.

Buying off opposing candidates, and in that way securing the votes of all or the of their friends, is in effect buying the office. It recognizes candidacy for office merchantable commodity, a thing having a money value, and is as destructive t purity and freedom of elections as the direct bribery of members of the legislature.

A candidate for the Senate without strength or merit may by purchasing the i ence and support of all or a part of his competitors and withdrawing them fro canvass succeed in an election, thus not only committing a fraud upon the frien

the candidates who were purchased off, but a greater fraud upon the people of the State, who may be thus saddled with a representative in the Senate of the United States about whom they know little, for whom they care nothing, and who possesses little ability to represent their interests.

Mr. Smith, the friend of Mr. Caldwell, testifies that he paid Mr. Carney the further sum of $7,000 while at Topeka and just before the Senatorial election to meet Mr. Carney's alleged expenses while there, and through fear that Mr. Carney would after all withdraw from the arrangement and become a candidate.

Upon the check for this sum the money was drawn from the bank at Topeka in the evening by one T. J. Anderson, who testified that he gave it to Mr. Carney, and that he was ignorant of the consideration for which it was paid. Other testimony impeaches that of Mr. Anderson and raises a strong presumption that he was engaged in the purchase of votes for Mr. Caldwell, and for which this $7,000 was used, and that for his services he afterward received the sum of $5,000 from Mr. Caldwell. Mr. Carney swears positively that he did not receive this $7,000 or any part of it, but he indorsed the check at the request of Mr. Smith to enable him to procure the money from the bank; that the money was to be used in procuring votes for Mr. Caldwell, and that a package containing this money, as he believes, was placed by Mr. Anderson on a table in Mr. Carney's room, where it could be and was conveniently carried off by the parties for whom it was intended.

Taking all the testimony together, the probability is that Mr. Carney did not get the $7,000, as no good reason was presented by Mr. Smith why when Mr. Caldwell was holding Governor Carney's written promise not to be a candidate and Mr. Carney holding notes to be paid by Mr. Caldwell for $15,000 a new arrangement should be made by which Mr. Smith should pay Mr. Carney $7,000 more, making $22,000 in all.

We now come to the consideration of the transaction with Mr. Sidney Clarke. He had been a member of Congress, had been a candidate for the United States Senate during the preceding canvass before the people, and many members of the legislature were elected upon personal pledges to vote for him for Senator. When the first vote was taken in the separate houses Mr. Clarke received 27 votes, the largest number given for any candidate but one; but the votes satisfied him and his friends that he could not be elected. An arrangement was concluded between Mr. Caldwell and a Mr. Stevens, a friend of Mr. Clarke, at a late hour in the night before the joint convention of the two houses, by which Mr. Caldwell was to pay Mr. Clarke's expenses in the canvass, estimated at from $12,000 to $15,000, and Mr. Clarke was to withdraw in favor of Mr. Caldwell. At a caucus of the friends of Mr. Clarke, held at 9 o'clock on the morning of the joint convention when Mr. Caldwell was elected, Mr. Clarke made a speech and urged them to vote for Mr. Caldwell, and in joint convention his name was withdrawn and all his friends but one voted for Mr. Caldwell. Subsequently in this city Mr. Clarke had several conferences with Mr. Caldwell, in which the latter promised to comply with his engagement with Mr. Stevens and pay Mr. Clarke's expenses, estimated at from $12,000 to $15,000, but never did. Mr. Clarke was unwilling to admit that he had made an agreement to transfer his friends to Mr. Caldwell in consideration of the latter's promise to pay this money, but taking all the testimony together the committee have no doubt that the transaction between him and Mr. Clarke was as has been stated. Mr. Caldwell's subsequent refusal to pay the money to Mr. Clarke does not relieve the character of the transaction, and very probably resulted in the exposure of Mr. Caldwell and the institution of this examination.

There was nothing in the evidence to show that Mr. Clarke's expenses in the Senatorial canvass or in the preceding canvass before the people amounted to half the sum which Mr. Caldwell was to pay him.

Mr. Carney and Mr. Clarke each testifies that Mr. Caldwell told them after the election that his election had cost him $60,000. Mr. Anthony, the mayor of the city of Leavenworth, testified that Mr. Caldwell admitted to him that the election had cost him over $60,000. Mr. Burke, editor of the Leavenworth Herald, and a supporter of Mr. Caldwell in his canvass, testifies that after the election Mr. Caldwell told him that the money he had paid Mr. Carney was not more than 10 per cent. of the whole amount which the election had cost him, and on another occasion that the election had cost him more than twice his entire salary.

The committee have had much difficulty in tracing the money transactions; but the evidence shows that various sums, amounting to over $50,000, were drawn under circumstances that make it probable they were used to procure Mr. Caldwell's election. The sum of $15,000 paid to Mr. Carney has already been stated. The second sum of $7,000, which Mr. Len. T. Smith swears was paid to Mr. Carney, and which Mr. Carney denies receiving, and testifies to circumstances showing it was used for the bribery of members of the legislature, has also been referred to. It is further shown that three or four days before the election took place Mr. Caldwell's agent went into the banking

house of Scott & Co., at Leavenworth, and drew the sum of $10,000 upon check for the avowed purpose of taking the money to Topeka by the train which was given as the reason for presenting the check before bank hour Smith, banker at Topeka, testified that at 9 o'clock in the evening befo took place, Dr. Morris, of Leavenworth, a very active friend of Mr. C $5,000 from his bank, and that Judge Crozier, of Leavenworth, an influe of Mr. Caldwell, and then at Topeka laboring for his election, drew $1 bank after banking hours at the request of Mr. Smith, which was hand Smith. The testimony left no doubt upon the minds of the committee th who honored these different checks at Topeka after banking hours under money was to be used for political purposes. The evidence further show J. Anderson subsequently received from Mr. Caldwell the sum of $5,000 in the election. A draft for $10,000, drawn by the solicitor of the Kans road Company upon the treasurer of that company, was presented at the Bank of Topeka by Mr. T. J. Anderson on the 23d of January, the c election, and the money drawn upon it under circumstances which taker with other testimony make it probable that the money was used for 1 election. The committee have no reason to believe that they have traced that was used, and in the foregoing statement have taken no account of sums shown to have been paid by Mr. Caldwell for the expenses of his fi Topeka.

Mr. William Spriggs, a former treasurer of Kansas, testified in regard t tuted committee of six of Mr. Caldwell's leading friends who met from t Topeka during the day and evening for five or six days before the electio report progress in electioneering for Mr. Caldwell; that during the m committee it was reported by Mr. Smith what members of the legisla secured to vote for Mr. Caldwell, how much was offered to others, and h asked by others. We quote from his testimony:

"We usually met at 10 o'clock in the morning. We had a roll of the the house and kept them, and we would compare notes, and then such a committee would be sent that day or at such a time to see such member and such another one to see somebody else, whoever we thought would b for that particular place, and then we would meet again at such another h what we had done and what success we had had, and in some quite a num I do not know how many. In making the report and comparing notes member of the committee would report; in calling over the names he such and such a man and he would say, 'We had better not count that is under negotiation and he is a little too high; I think I can bring him

This witness testified to several interviews with Mr. Caldwell, and we testimony:

"I will just tell you what Mr. Caldwell said to me about it. He asked any members of the legislature that could be influenced by the use of m votes, and I told him that I knew two members I believed that had th having been influenced in their votes on former occasions."

And further on:

"He said if I found any members that wanted a little money for votes to him and to Len. Smith.

"Mr. Caldwell said there was another class of high-toned gentleme legislature that would not sell their votes, but they put it in this way: been to a pretty heavy expense in carrying their election and they wo expenses paid, and if I met with any of that class to send them to him o

The testimony of Mr. Spriggs is very full and shows that the canvass o was thoroughly corrupt and that money was the chief argument relied many other things he stated that T. J. Anderson told him that he had pai a member of the house, $1,000 for his vote; that Mr. Crocker afterward b handed the money over to a Mr. Carson to be returned to Mr. Anderso got on the cars, went home, and kept the money. Carson was afterward committee and corroborated the statement, admitting that he had recei back from Mr. Crocker to be returned to Mr. Anderson, but that he had k himself for his services to Mr. Caldwell. Mr. Carney testifies that in an i Mr. Caldwell after the election in which he was urging him to procure a for one of Mr. Carney's friends who had voted for him, Mr. Caldwell pocket a memorandum-book and appeared to run over a list of names, the man referred to, said, "That man has been paid;" and Mr. Carney u his manner that he had in this memorandum-book a list of members paid to each; that Mr. Caldwell told him upon another occasion that he Bayers the sum of $2,500 for his vote and Mr. James F. Legate the sum of

vote. Mr. Anthony also swears that in a conversation with Mr. Caldwell that gentleman admitted to him that he had paid $2,500 for the vote of Mr. Bayers. There is much testimony showing that Len. T. Smith, Frank Drenning, James L. McDowell, George A. Smith, and T. J. Anderson, among the most active friends of Mr. Caldwell during the canvass, admitted at different times that they had offered money to members of the legislature to vote for Mr. Caldwell, in some cases specifying the members to whom it was offered and paid and in other cases that offers had been made that had not been accepted, and that negotiations were on hand with others which had not been completed. These men have denied before the committee all conversations and admissions of this character and all payment of money to members or offers to pay them, and several members of the legislature who were implicated have expressly denied that they received the money or that offers were made them.

Mr. Caldwell offered testimony showing that Mr. Carney had made threats to have him ousted from the Senate; that Mr. Anthony was hostile to him; that Mr. Burke had a lawsuit with him growing out of money furnished to Mr. Burke about the time of the election; and to contradict several statements of Mr. Clarke. The most important contradictions of the testimony produced against Mr. Caldwell are made by members of the legislature who were themselves implicated or by the agents of Mr. Caldwell who were directly charged with taking a part in these corrupt practices; and there are some contradictions made by witnesses against whom there is no cause of suspicion. But taking the testimony altogether, the committee cannot doubt that money was paid to some members of the legislature for their votes, and money promised to others which was not paid, and offered to others who did not accept it.

By the Constitution, each House of Congress is made the judge of elections, returns, and qualifications of its members.

If a person elected to the Senate has not the constitutional qualifications, or if the election is invalid by reason of fraud or corruption, the jurisdiction to examine and determine is expressly vested in the Senate.

Another clause of the Constitution authorizes the Senate to expel a member by a two-thirds vote. The causes for which a Senator may be expelled are not limited or defined, but rest in the sound discretion of the Senate.

It has been a subject of discussion in the committee whether the offenses of which they believe Mr. Caldwell to have been guilty should be punished by expulsion or go to the validity of his election, and a majority are of the opinion that they go to the validity of his election and had the effect to make it void. Wherefore the committee recommend to the Senate the adoption of the following resolution:

Resolved, That Alexander Caldwell was not duly and legally elected to a seat in the Senate of the United States by the legislature of the State of Kansas.

In conclusion the committee remark that while Mr. Caldwell did things to procure his election which cannot be tolerated by the Senate, they believe he was as much sinned against as sinning. He was a novice in politics and evidently in the hands of men who encouraged him in the belief that Senatorial elections in Kansas were carried by the use of money.

[Special session of Senate, March, 1873.]

THURSDAY, *March* 6, 1873.

Mr. Morton submitted the following resolution for consideration:

"*Resolved*, That Alexander Caldwell was not duly and legally elected to a seat in the Senate of the United States by the legislature of the State of Kansas."

MONDAY, *March* 10, 1873.

The Senate proceeded to consider the resolution, &c.

[The debate is found on pages 30–38 of the Congressional Record, vol. i, special session of the Senate, 43d Cong., 1873.]

TUESDAY, *March* 11, 1873.

On motion by Mr. Morton, the Senate resumed, &c.

[The debate is found on pages 41 47 of the Congressional Record above referred to.]

WEDNESDAY, *March* 12, 1873.

The Senate resumed, &c.

[The debate is found on pages 48–62 of the Congressional Record above referred to.]

THURSDAY, *March* 13, 1873.

The Senate resumed, &c.

[The debate is found on pages 66–77 of the Congressional Record above referred to.]

FRIDAY, *March* 1

The Senate resumed, &c.

[The debate is found on pages 80–90 of the Congressional Record above refer

MONDAY, *March* 1

The Senate resumed, &c.

[The debate is found on pages 90–102 of the Congressional Record above re

TUESDAY, *March* 1

The Senate resumed, &c.

[The debate is found on pages 104–113 of the Congressional Record above re

WEDNESDAY, *March* 1

The Senate resumed, &c.

[The debate is found on pages 118–125 of the Congressional Record above re

THURSDAY, *March* 2

The Senate resumed, &c.

[The debate is found on pages 126–134 of the Congressional Record above re

FRIDAY, *March* 2

The Senate resumed the consideration of the following resolution, submitte Morton on the 6th instant, viz:

"*Resolved*, That Alexander Caldwell was not duly and legally elected to a se Senate of the United States by the legislature of the State of Kansas."

On motion by Mr. Ferry, of Connecticut, to amend the resolution by strikin following words, "was not duly and legally elected to a seat in the Senate of t States by the legislature of the State of Kansas," and in lieu thereof inserting he hereby is, expelled from the Senate of the United States,"

After debate,

On motion by Mr. Sherman, the Senate proceeded to the consideration of business.

[The debate is found on pages 137–154 of the Congressional Record above refe

SATURDAY, *March* 22

The Senate resumed the consideration of the following resolution, submitte Morton on the 6th instant:

"*Resolved*, That Alexander Caldwell was not duly and legally elected to a se Senate of the United States by the legislature of the State of Kansas."

The question being on the amendment yesterday proposed by Mr. Ferry, of cut, viz, strike out the following words, "was not duly and legally elected in the Senate of the United States by the legislature of the State of Kansas," an thereof insert "be, and he hereby is, expelled from the Senate of the United

On motion by Mr. Ferry, of Michigan, to amend the amendment by striking words "expelled from the Senate of the United States," and in lieu thereof "declared to have been elected a Senator of the United States by the legislatu State of Kansas,"

After debate,

On motion by Mr. Morton, the Senate proceeded to the consideration of business.

[The debate is found on pages 154–164 of the Congressional Record above refe

MONDAY, *March* 24

The Vice-President laid before the Senate a communication from Alexander informing the Senate that he had transmitted to the governor of Kansas his re as a Senator of the United States from that State; which was read.

[The letter of resignation and a statement by Mr. Morton is found on pages of the Congressional Record above referred to.]

INVESTIGATION OF THE CHARGES OF BRIBERY PREFERRED AGAINST MR. IN THE SENATORIAL ELECTION OF 1873.

[Third session of the Forty-second Congress.]

MONDAY, *February* 10

Mr. Pomeroy rose to a question of privilege, and having addressed the Sen the subject of certain charges made in connection with the recent Senatorial el

the State of Kansas, submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the charges of bribery and corruption in the late Senatorial election in the State of Kansas, relating to the alleged purchase by the Hon. S C. Pomeroy, United States Senator from Kansas, of the vote of A. M. York, a member of the senate of that State, be, and the same are hereby, referred to a special committee to be appointed by this body, consisting of five members; and that the said committee be, and are hereby, authorized and directed to investigate the same; and for that purpose to send for persons and papers, summon witnesses, employ a stenographer, and make such report to this Senate as in their judgment shall be justified by the law and the facts."

Whereupon

The Vice-President appointed as such committee Mr. Frelinghuysen, Mr. Buckingham, Mr. Alcorn, Mr. Thurman, and Mr. Vickers.

[Mr. Pomeroy's remarks are found on pages 1214, 1215 of the Congressional Globe, part 2, 3d sess. 42d Cong.]

THURSDAY, *February* 13, 1873.

Mr. Frelinghuysen, from the select committee to inquire into certain allegations against Hon. S. C. Pomeroy, reported the following resolution; which was read the first and second times by unanimous consent:

"*Resolved*, That the sum of $8,000, or so much thereof as may be necessary to pay the expenses of the select committee appointed on the 10th instant to inquire into certain charges of bribery and corruption in connection with the recent Senatorial election in Kansas, is hereby directed to be paid out of the contingent fund of the Senate, under the order of the chairman of said select committee, the vouchers therefor to be approved by the Committee to Audit and Control the Contingent Expenses of the Senate."

The Senate proceeded to consider the said resolution as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time by unanimous consent.

Resolved, That it pass.

MONDAY, *February* 17, 1873.

Mr. Frelinghuysen submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the select committee appointed to inquire into charges of bribery and corruption in the recent Senatorial election in Kansas have leave to sit during the sessions of the Senate.

TUESDAY, *February* 18, 1873.

The Vice-President laid before the Senate the memorial of B. F. Simpson, representing, as attorney, A. M. York and others before the select committee of the Senate to inquire into certain allegations against the Hon. S. C. Pomeroy, praying that said committee be authorized to receive the statements of certain members of the legislature of the State of Kansas that they were offered money or other valuable considerations by the agents and friends of the said Pomeroy at the recent election of Senator in Kansas.

On motion by Mr. Sherman that the said memorial be referred to the select committee to inquire into certain allegations against Hon. S. C. Pomeroy,

After debate,

Mr. Sherman having withdrawn the motion submitted by him,

Mr. Ferry, of Connecticut, submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the committee charged with the investigation of the charges against Hon. S. C. Pomeroy be directed to inquire into any allegations of bribery or corruption by said Hon. S. C. Pomeroy in the recent election for United States Senator by the legislature of Kansas."

[The debate is found on pages 1448–1454 of the Congressional Globe, part 2, 3d sess. 42d Cong.]

SATURDAY, *February* 22, 1873.

The Vice-President laid before the Senate a resolution of the legislature of Kansas, declaring that it is due to the dignity and honor of that State that Hon. S. C. Pomeroy should resign his office of United States Senator; which was referred to the select committee to inquire into certain allegations against Hon. S. C. Pomeroy.

MONDAY, *March* 3, 1873.

Mr. Frelinghuysen, from the select committee appointed to inquire into certain allegations against S. C. Pomeroy, submitted a report (No. 523) thereon.

Mr. Vickers and Mr. Thurman, members of the committee, each submitted his views

concerning the charges against Mr. Pomeroy; which were ordered to be printed pany the report (No. 523).

REPORT OF COMMITTEE ON THE CHARGES OF BRIBERY PREFERRED AGAI POMEROY IN THE SENATORIAL ELECTION OF 1873.*

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1873.—Ordered to be printed.

Mr. Frelinghuysen, from the select committee to inquire into certain a against Hon. S. C. Pomeroy, submitted the following report:

The committee appointed to investigate the charges of bribery in the recent f election of Kansas, preferred against Senator Pomeroy by A. M. York and Simpson, respectfully report:

That without any avoidable delay they have performed the duty imposed u

The charges preferred by Mr. Simpson consist of a number of alleged spec bribery or attempts to bribe. The charge of Mr. York is that of a single act o

I. Attention is first invited to the charges of Mr. Simpson.

Mr. O'Driscoll, a member of the legislature, testifies to four different attemp him. These charges are contested by the testimony of Asa Lowe, David Pa Hoke, S. P. Brown, and other witnesses referred to hereafter.

Frank Bacon, a member of the Kansas legislature, speaks of two attempt him, and his charges are contested by Albert H. Horton and other witnesses r hereafter.

William H. Bond, a member of the Kansas legislature, speaks of three at influence him improperly. These charges are contested by the testimony o Murphy, Albert H. Horton, C. A. Rohrabacker, and two other witnesses r hereafter.

C. A. Rohrabacker makes the allegation in his testimony that Senator Pon him to give Mr. Davis, a member of the legislature, two or three hundred dolla this charge is entitled to no weight sufficiently appears by the examination of M backer's evidence.

The committee are unanimously of the opinion that even if the foregoing tr were made out as cases of bribery, there is no sufficient evidence to connec Pomeroy with any of them. Mr. William Simpson, a member of the legisla the neutral lands of Kansas, testifies that he went to Senator Pomeroy's roo 28th of January, as the election was to occur on the 29th and 30th of January. about the bill in Congress for the relief of the settlers on those lands, and tha Pomeroy told him that if he would vote for him he would pay the expens Laughlin, the agent of those settlers at Washington, and who was supported b untary contributions of those settlers; that the number of settlers is about 25 that Mr. Laughlin's compensation is small. On this charge there is some dif opinion in the committee; the majority of the committee holding that if the cl uncontradicted and unexplained, while it would unquestionably present the improper appeal to "motive," it is at least questionable whether it would be of attempting to bribe—not because of the small distributive amount of Mr. S contribution, but because he was under no obligation to pay anything. If the Simpson was to pay was a tax, the case would be different. But Senator Po poses his evidence to that of Mr. Simpson, and testifies that Mr. Simpson told little money Mr. Laughlin, the agent, had, and that he had so written him, an had no means to continue at Washington save by voluntary contribution, and (Pomeroy) told Simpson he was a friend of the settlers and would in any event c to his support, and that when he reached Washington he did accordingly Laughlin $50; and Mr. Pomeroy then adds in his testimony, "and hence it that my contribution had no relation to any man's vote."

A majority of the committee are of opinion that under this state of facts, a the evidence, this charge of bribery is not affirmatively sustained. The witness Albert H. Horton, George T. Anthony, John A. Martin, and Mr. Legate, the co friends and advisers of Mr. Pomeroy in the canvass, and in a position where th naturally know, state that they have no knowledge of Mr. Pomeroy using, o izing to be used, any improper influences in the election.

And Mr. Pomeroy most positively denies that he ever, directly or indirectly promised to pay any individual one dollar, or any other sum, for his vote for h late Senatorial election.

* Taken from Senate Reports, 42d Cong., 3d sess., No. 523. The evidence accompanying is here omitted.

A majority of the committee are of opinion that none of the charges preferred as aforesaid by Mr. B. F. Simpson against Mr. Pomeroy have been sustained.

II. We now come to the consideration of the specific charge of bribery made by Mr. A. M. York.

Mr. York's statement is that Mr. Pomeroy gave him, on Monday, the 28th of January, $2,000, and on Tuesday, the 29th of January, $5,000, as a bribe to vote for him in the joint convention on Wednesday.

Mr. Pomeroy's statement is that he did give him the money at the times and in the amounts stated, not as a bribe, but to carry to Mr. Page as a loan from Pomeroy to aid Page in the purchase of thirty bonds of the United States of the denomination of $1,000, Page having $25,000 in currency.

The question the committee is to determine is not which, if either, of these two statements, painfully irreconcilable, is in all its details true; but the question is whether, taking all the testimony together and weighing it, Mr. York has sustained his charge.

There are circumstances that legitimately affect the credibility of Mr. York in this transaction. John M. Holmes testifies to hearing Mr. York say after the Senatorial election that "he had determined to defeat Mr. Pomeroy, cost what it might, and that his exposure of Mr. Pomeroy was the work of time." Mr. York testifies that he, W. A. Johnson, G. C. Horton, Major B. F. Simpson, spoken of as a candidate for the United States Senate, had a consultation on Monday evening, January 28, and it was agreed that if Pomeroy should offer York money he was to take it and expose him in the convention on Wednesday. It was, in the language of Mr. York, the conclusion of those gentlemen there, at that time, that there was no other way of defeating him, and that he would be elected; and it was further there agreed that the money should be appropriated to the school fund of Kansas, and they pledged themselves to secrecy.

Chester Thomas says that Mr. B. F. Simpson, who acted as counsel for Mr. York in this investigation, and is named by him as above, said to him, "Well, we could not afford to have Pomeroy elected; we had to defeat him some way; we were beat, and we had to do something."

I. L. Sharp gave like testimony. It appears that the plan was kept secret until Wednesday at the joint convention, when an excited exposure was sprung upon that body and the money was exhibited by Mr. York, and he made the statement that members of the legislature had Mr. Pomeroy's money burning in their pockets, of which fact we not only have no proof, but it appears that Mr. York had no such knowledge. It appears that an effort was made by members to adjourn and also to have a recess for an hour or two, that the truth of the allegations made might be ascertained, and that Mr. York resisted these efforts, for fear, as he says, that Mr. Pomeroy might be able to appoint his own successor. Thus, even if Mr. York's, and certainly if Mr. Pomeroy's, statement be taken as true, Mr. York was the principal actor in an effort not only to betray and defeat Mr. Pomeroy, but to deprive the State of Kansas of its free and deliberate choice of a Senator.

These circumstances do not prove that Mr. Pomeroy did not bribe Mr. York, but they do impair the credibility of Mr. York as a witness, for when a line of deception has been entered upon no one can say when it is dropped and the golden thread of truth adopted.

The truth which the committee seek is as to what occurred in the room on Monday and Tuesday when Pomeroy delivered the money to York. They were alone, and contradict each other. There is, however, evidence relating to Mr. York's purpose in going to Mr. Pomeroy's room. Mr. York says that Mr. Hairgrove told him that Mr. Pomeroy would be glad to have a business interview with him, and that invitation assured him (York) that Mr. Pomeroy was about to offer him money, and was the reason of the private consultation, before alluded to, with William Johnson, B. F. Simpson, and J. C. Horton, when the plan of operations was adopted. William Johnson says Mr. York said at that consultation that Hairgrove had invited him to Pomeroy's room on a business matter, or to have a business interview, that night, and from that they all concluded that that meant a money proposition. J. C. Horton says York did not give the name of the person who had invited him to Mr. Pomeroy's room. B. F. Simpson, the other person present at the consultation, acted as counsel for Mr. York before the committee, and was not sworn.

Mr. Hairgrove says he did not give any invitation to Mr. York to call at Mr. Pomeroy's room; that he had a conversation with Mr. York and told him that if he wanted to see Mr. Pomeroy he would so tell Pomeroy, but that he never took any message from Mr. Pomeroy to Mr. York.

Mr. J. Q. Page testifies that after his interview with Mr. Pomeroy on this Monday he saw Mr. York and told him that Mr. Pomeroy would probably give him a package of money for him (Page) and that he wanted him (York) to bring it to him. This York denies.

Mr. York's testimony is, in effect, though not in words, that on Monday evening be-

fore he had the interview with Pomeroy he not only supposed he was about to b him, but was so certain and so assured of it that a pledge of secrecy as to it was ent into with his associates as to the coming event; that it was determined that the bril should not be disclosed on Tuesday in the senate or house, but should first be m known in joint convention on Wednesday; that it was assumed the amount was to b considerable that it would be a suitable contribution to the school fund, to which it by agreement destined, and that to make proof thereafter clear that he had received money from Mr. Pomeroy he was searched at 7 p. m. and found to have but about $4(his person; after which search, it may be remarked, York went about the town and some two hundred persons before he saw Mr. Pomeroy at 12 p. m., and the only foun tion for this assurance of the coming bribe, according to Mr. York, was the fact that Hairgrove had invited him to a "business interview" to be had with Mr. Pomeroy t evening; and this, as before stated, Mr. Hairgrove denies.

The committee are at a loss to discover from whence Mr. York derived this assura that he was to be bribed, and that it was to be that night, and to be in a large sum, fr any fact consistent with his statement. If it be true, as Mr. Page testifies, that he l that afternoon told him that Mr. Pomeroy would probably give him a package of mo to bring to him, one can more readily understand this confidence that he was to rece money. But that he had any such notice Mr. York denies. If Mr. York was acting information Page gave him, there is no evidence that he communicated that informat to his associates.

Another improbability in Mr. York's statement is that Mr. Pomeroy gave him $7,(in cash, not for his unconditional support in the senate on Tuesday and in joint conv tion on Wednesday if there should be a vote there, but that on Monday night he agr to give him $8,000 for his vote under a stipulation that he might vote against him the senate on Tuesday (when his vote might be as desirable as on Wednesday), and t he was at liberty even to reconsider his conclusion as to voting for him on Wednesd and that on such an understanding he paid him on Monday $2,000, and on Tuesday, a he had that day voted against him, $5,000 more. And Mr. Pomeroy did this while appears in evidence, beyond question, that he was either honorably refraining from corrupt influences to promote his election or that he was carefully on his guard agai being entrapped in the use of money, and while it appears that Mr. York was attend the anti-Pomeroy caucus, acting as its secretary, and known by Mr. Pomeroy to h been opposed to him.

Now we come to the consideration of the statement of Mr. Pomeroy that he gave York this $7,000 to take to Mr. Page to enable him to purchase bonds of the Uni States to aid in the establishment of a national bank.

In considering this statement Mr. Pomeroy is entitled, to the extent that other m are, to the presumption of innocence—a presumption somewhat strengthened by the f that his accusers have failed to sustain their other charges of bribery against him in t same election.

Mr. Page was a man of means and a banker, living at Independence. Mr. McBartn of the national bank at Junction City; Mr. Shaw, of the Paola National Bank, and Legate, the clerk of Mr. Pomeroy's committee, all heard Mr. Page conversing w Mr. Pomeroy during the Senatorial canvass at Topeka about starting a national bank Independence, part of the conversation relating to the amount of capital required, t not as to Mr. Pomeroy advancing any part of the capital.

Mr. Maxson testifies to Mr. Pomeroy inquiring of him prior to 27th January as to Page's pecuniary responsibility; that he told Mr. Pomeroy that he was responsible a trustworthy.

Mr. Page lived in the same town with Mr. York, and they were friends. It appe by Mr. York's testimony that he called on Mr. Pomeroy with Mr. Page some ten da before the occurrence to which our investigation is directed. Mr. Page testifies that requested Mr. Pomeroy's influence to obtain a national bank at Independence; that Pomeroy told him it would require $50,000, but if he had $30,000 in United Sta bonds he could pay the balance in installments. Page said that he could raise $25,0 in currency, and that Mr. Pomeroy said he would help him to the balance, as he h helped other young men, and that Mr. Pomeroy said he expected to have money bef the election, and would let him have it.

On Monday, Mr. Page says, he went to Mr. Pomeroy and told him he was going hom and it was arranged that Mr. Pomeroy was to send him the money by Mr. Bell or York. It is to be observed that Mr. Pomeroy then had in his possession the $7,0 and that fact should receive its weight as affecting Mr. Pomeroy's statement. And Page says that, on the same day, he told Mr. York that it was probable that Mr. Pomer would hand him (Mr. York) a package of money for him; and if so, he wished him bring it to him.

Mr. Page says that he on Monday told Mr. Hairgrove, who was also a promoter of

election, that he was going home, but was persuaded by Mr. Hairgrove to
he did not stay at the same hotel with Mr. Pomeroy, and did not see him
peak with him while at Topeka, though he did see him from the door of Mr.
room.

neroy states, on his oath, that Monday evening, January 27, Mr. York called
ving sent word that he was coming, and informed Mr. Pomeroy of what was
t the anti-Pomeroy caucus; spoke of the favor Mr. Pomeroy had granted his
e, and said that Page had requested him to get the money and forward it to
lependence, and that he (York) would leave soon after the election for home.
neroy told him he was not prepared at that time to furnish it, although he said
omised it to Page before he (Pomeroy) left the city. Mr. York said perhaps
roy had no confidence in him. Mr. Pomeroy assured him of his confidence
nat he could furnish $2,000 at any time, and thought he should be able to pay
next day, and paid him $2,000 then. It is proper to notice that on this Mon-
omeroy had the $7,000 with him.

the next day, Mr. Pomeroy says, he sent Mr. Knight and Mr. Lemuel Pomeroy
Mr. Page to inform him of the transaction, if he had not left the city, and to
as all right. They could not find him. Neither Lemuel Pomeroy nor Knight
ned on this point. That on the afternoon of that day (Tuesday) Mr. Pomeroy
York the $5,000 in currency, in packages of $1,000, with the bank-mark on

ne alleged exposure was made in the convention, Judge Horton, who was pres-
nat when a recess was refused, as soon as he could get out of the crowded house,
Mr. Pomeroy's room and told him what had happened; that Mr. Pomeroy was
ned; that no one defended him, and said he had done nothing wrong; that while
talking a messenger came in and said that the convention was voting for Sena-
here being much excitement at the hotel, Mr. Pomeroy went to a private house,
n as there Mr. Pomeroy told him substantially what Mr. Pomeroy has stated
committee—that Mr. Pomeroy said that he supposed Mr. Page, now thinking
ing to lose the money, might go back on him and he would have trouble; but
ould stand up to the agreement there was no question that before the country
ends he would be fully vindicated.

re several questions that arise in this transaction which are not satisfactorily

d not Mr. Pomeroy deliver the entire $7,000 to Mr. York on Monday, instead
on Monday and $5,000 on Tuesday?

e Mr. Pomeroy says the $5,000 was locked up in his valise and the key with
but the clerk was near; and it is also true that Mr. Pomeroy says he sent out
y to find Mr. Page, if he was in town, to see that it was all right, and could
im; and he says that when he hesitated in paying Mr. York anything on Mon-
ng he considered it a want of confidence. The same difficulty exists, too, if we
York's statement. On the theory of his story, why did not Mr. Pomeroy pay
$7,000 on Monday? He says he only paid him then $2,000.

d not Mr. Page, who was present at the convention when the alleged exposure
state that Mr. York was to bring him a package of money from Mr. Pomeroy?
ne it was not certain the money was to be sent; the sum was not definitely
as to be from eight to ten thousand dollars. Neither was it known to him
would be sent by Mr. Bell or Mr. York; and yet it would seem natural for
re spoken.

d it happen that no one was present at either of the two interviews between Mr.
Mr. Pomeroy? Mr. Pomeroy speaks of that fact as merely accidental, he not
rely certain whether any one was present or not. It is clear, however, that
alone, and it is unfortunate for the solution of this question that they were so.

d it happen that Mr. Page and Mr. Pomeroy, holding their relations, did not
both in Topeka from Monday to Wednesday? This may have been accidental,
s the fact. Mr. Page says that he did go to Mr. Pomeroy's rooms, but that
a great press of people there, so that he could not reach him.

d not Mr. Pomeroy deliver the $7,000 to Mr. Page himself when he called on
He then had the money.

d not Mr. Pomeroy give Mr. York the money he was to take to Mr. Page in a
kage?

neroy may have desired, in view of the coming election, to conciliate Mr. York
g him that he was assisting his friend Page, by showing him that he was aid-
blishing a bank in his town, and by reposing confidence in him; but even the
of this improper motive is not a satisfactory answer to these questions.

re also some discrepancies between the statements of Mr. Pomeroy and Mr.
as to whether it was in the morning or in the afternoon of Monday that Mr.

Page last called on Mr. Pomeroy; perhaps they are not other than such as show the ab sence of arrangement between them as witnesses. These are questions, and there ma be others, to which the committee do not find satisfactory answers.

The committee, some of whom were absent on other duty from time to time as the evi dence was being taken, did not receive the printed testimony until the morning of Satu day, the 1st instant, and have given the evidence such examination as in the press c business they have been able, which has been by no means as thorough as was desirable

The committee, bearing in mind while examining the evidence that the whole tran action, whatever view be taken of it, is the result of a concerted plot to defeat Mr. Pomeroy and remembering that the burden of proof is on the party making the accusation, hav come to the conclusion that Mr. York has not sustained his charge by sufficient proo contradicted as it is by the evidence of Mr. Page and Mr. Pomeroy.

The committee report herewith the evidence taken and the briefs of the respectiv counsel.

FRED'K T. FRELINGHUYSEN.
WM. A. BUCKINGHAM.
J. L. ALCORN.

VIEWS OF MR. VICKERS.

I cannot forbear saying that this case is not entirely free from difficulty and embar rassment; but as a preliminary remark, I can say that I do not think any connection ha been proved between the persons alleged to have offered bribes, being the friends of Mr Pomeroy, and that Senator. Most, if not all, these instances of attempt to bribe hav been denied by the persons who it was said made the offer. Nothing has been trace to Mr. Pomeroy, and there is no difficulty in acquitting him of all charges of that cha acter. The counsel for the prosecution, when the testimony was admitted, proposed t connect Mr. Pomeroy with them, directly or circumstantially. The result proved failure to do so. I do not think that the offer of Mr. Pomeroy to assist Mr. Laughlin, a agent of certain poor settlers upon neutral lands in Southern Kansas, if Mr. Willia Simpson would support him for Senator, in connection with the surrounding circum stances, is of such a character as to amount to a direct offer to bribe, although th motive held out to Mr. Simpson cannot be approved. Mr. Pomeroy denies substantiall any motive or attempt to influence Mr. Simpson's vote, in the conversation held be tween them.

I dismiss this part of the case, and come to the charge of actual bribery made by Mr York against Mr. Pomeroy. Mr. York has testified before the committee, unequivo cally, to the offer of a bribe by Mr. Pomeroy to him for his vote, as a member of th legislature of Kansas, for Mr. Pomeroy for the place of United States Senator; that Mr Pomeroy paid him $2,000 on Monday night preceding the election on Tuesday, and $5,000 on Wednesday, before the meeting of the joint convention of the legislature on that day; that he (Mr. York) produced the money before the convention, stated all the circumstances, and declared that he knew of five or six members of the convention who had Mr. Pomeroy's money burning in their pockets, and he would disclose their names at the proper time. Mr. Pomeroy, in his testimony before the committee, denied emphatically the truth of Mr. York's statement, and averred that he handed him $2,000 and the $5,000 to him to be delivered to Mr. Page, a banker at Independence, to whom he had promised to loan the money to aid in establishing a national bank at Independence, in Kansas. Mr. Page swears that he told Mr. Pomeroy to send the money by Mr. York, or Mr. Bell (a member of the legislature), and that he told Mr. York that he had told Mr. Pomeroy, on Monday preceding the election, to hand the money over to him, to be carried to Mr. Page. Mr. Page also swears that he did not leave Topeka till Thursday, the day after the election, but did not converse with Mr. Pomeroy after Monday. Mr. Page had several conversations with Mr. Pomeroy upon the subject of establishing a national bank—some of them in the presence of others.

The following is a statement of part of the cross-examination of Mr. Pomeroy before the committee:

"Question (to Mr. Pomeroy). You say that on Monday night you gave to Mr. York $2,000; where, at that time, were the $5,000?—Answer. They were in my valise; not in my trunk.

"Q. Why did you not give him the $5,000 as well as the $2,000?—A. I had not it with me in the room at the time, and I intended to see Mr. Page the next morning.

"Q. In what room was it that you gave Mr. York the $2,000?—A. In what they call my private room.

"Q. Your reception room?—A. No; back of that.

"Q. Where was your valise that contained the $5,000?—A. It was in a closet, or in a place which I extemporized for a closet, behind my trunk.

"Q. In the same room?—A. Yes, sir.

"Q. Then why did you not give him the $5,000 at the same time that you gave him the $2,000?—A. For the reason that I wanted to see Mr. Page.

"Q. Had Mr. Page told you, Mr. Pomeroy, you could give the money to Mr. York?—A. Yes, sir; he had told me I might send it to him by Mr. York; that he was going to leave town, and to send it by Mr. York or by Mr. Bell.

"Q. When was it that Mr. Page told you to send the money by either of those gentlemen?—A. On Monday.

"Q. In the forenoon?—A. In the forenoon, the same day.

"Q. You say you did not give him the $5,000 because you expected to see Mr. Page the next day?—A. Yes, sir.

"Q. You knew, then, that Mr. Page had not left Topeka then?—A. I did not know whether he had or not. He had told me he thought he should go. I sent out for him on Tuesday twice, to find out whether he had gone.

"Q. As he had told you you might send the money by Mr. York, why did you hesitate to give Mr. York the whole $7,000?—A. For two reasons: First, I wanted to know if it was all right from Mr. Page; and then I had not the $5,000 accessible at that time.

"Q. Did I not understand you that the $5,000 were in the same room?—A. Yes, sir; but in a valise. I kept money and private papers in a valise which Mr. Lemuel Pomeroy, my clerk, had the control of and key of; but the trunk I had the key of myself.

"Q. You had not the key of the valise in which the $5,000 were?—A. No, sir; I had not.

"Q. Where was Mr. Lemuel Pomeroy at that time?—A. He was in the reception room or abed. He was about the hotel.

"Q. I understand you took no memorandum from Mr. York that you had delivered the money to him?—A. I did not.

"Q. Was this a subscription to the stock of that bank?—A. No, sir.

"Q. It was a loan?—A. It was a loan.

"Q. Interest-bearing or not?—A. I had made no particular arrangement. I told him I would help him to money enough with what he had got to buy thirty bonds. He was to settle with me after he got the currency here.

"Q. How long was he to have the money?—A. I think it was thirty or forty days. It generally takes thirty days after putting the bonds in to get the currency from the Department."

I have not referred to all the testimony, but only a small portion of it, the whole being printed, and to which the Senate is referred; but I have noticed the material portions of Mr. York's and Mr. Pomeroy's and Mr. Page's, so as to bring the point at issue more distinctly and prominently into view. It will be seen that Mr. York stated to the joint convention that he knew of five or six members of that body who had Mr. Pomeroy's money burning in their pockets, and at a proper time he would disclose their names. A few days subsequent, when told by a member that his statement of that fact, and the manner of making it, impressed his mind with the supposition or belief that he (York) had received his information from Pomeroy, he made no reply nor entered into any explanation. Mr. York, when interrogated before the committee, does not remember the statement made in reference to the bribery of other members, and pleaded excitement as an excuse for his defect of recollection. That part of the declarations of Mr. York before the convention had, no doubt, its effect upon their minds, coupled with the revelations about the money transaction and the production of the funds, and doubtless he intended it should have. He had Mr. Pomeroy's defeat in view, and as auxiliary to other statements they were introduced. This additional charge of bribery of other members was of such a notable character which, if true, could not so soon be forgotten. It would require the largest measure of charity to believe that Mr. York could have forgotten them, or the charge which he made. The conclusion is inevitable that he stated as facts what he did not know, or, in other words, that he manufactured the statement for the occasion. Mr. Pomeroy denies all the material facts, and asserts that the money was handed to Mr. York to be taken to Mr. Page. He denies explicitly every offer directly or indirectly to bribe Mr. York, or the offer or delivery of money for his vote. But there are circumstances connected with the transaction that cast a sombre hue over portions of it. The lateness of the hour; the place, the room of Mr. Pomeroy; the absence of all witnesses; the fact that Mr. Page was then in Topeka; the delivery of a portion of the money, and the balance on Wednesday morning, the day of the meeting of the convention; the limited acquaintance of the parties; no receipt or memorandum taken; the fact that Mr. Borland loaned Mr. Pomeroy $5,000 on the Friday preceding (Mr. Pomeroy states, in his testimony, he wanted it for Mr. Page); the fact that on Saturday following he did not inform Mr. Page he had the money; that on Monday he told Mr. Page that he expected to receive the money before he left Topeka, and was told by Mr. Page to send it by Mr. York or Mr. Bell (Mr. York residing in the same town with Mr. Page—Independence), when he had the Friday before borrowed the money from Mr. Borland,

and had it in his possession at the time he told Mr. Page he expected to receive it; and that the money was not inclosed in any envelope; the fact that Mr. Pomeroy states nothing was said about security or interest (although the parties had not known each other for more than one or two years, and resided at different and distant points); that Mr. Page states he was to have it without interest; the additional facts elicited in the cross-examination of Mr. Pomeroy by one of the committee, that the reason he did not pay over the whole $7,000 to York on Monday night, but only $2,000, was that he wanted to see Mr. Page first; and, on further cross-examination, that he had not the key of the valise where the $5,000 was placed; first that the money was not in the same room (the back room) where the parties were, and afterwards that it was. These and other circumstances connected with the affair show discrepancy apparently irreconcilable. Mr. Pomeroy, when testifying, would naturally state the case as favorable to himself as it could be done consistently with the facts.

On the other hand is to be considered the circumstances leading to, attendant, and consequent upon the alleged receipt of money by Mr. York from Mr. Pomeroy. Four persons conspired to defeat Mr. Pomeroy's election to the Senate of the United States; the plan of operations was concocted at night, and Mr. York, as the chief conspirator, was selected or volunteered to carry out the programme. He went to Mr. Pomeroy's rooms very late at night. His object was to obtain Mr. Pomeroy's confidence and his money, and then betray him. He induced Mr. Pomeroy to believe that he would be his friend, but that he wanted money. He asserts that he sold his promised support to Mr. Pomeroy for $7,000; received the $2,000 before he left, and the balance, of $5,000, the next day; that he took the money to the joint convention, made an exciting speech and exposure, and strenuously opposed all motions for adjournment or recess to allow Mr Pomeroy an opportunity for denial or explanation. Although a witness who acknowledges the turpitude of his conduct, and the iniquitous means he resorted to to deceive and induce another to commit an offense that he might betray him, may possibly be believed, yet the mind cannot relieve itself of the unfavorable effect which the fact stated and the moral taint of the witness must produce. Detectives, it is said, are employed by governments and by individuals, and to use stratagems and devices to detect suspected offenders. But the cases, I presume, are not exactly parallel. Mr. York and Mr. Pomeroy were personal and political friends, and Mr. York admits that he sought Mr. Pomeroy and exerted his influence to induce him to commit a crime by the offer of a very valuable consideration. A detective may lay his plans and place temptations in the way of one he wishes to entrap, but I do not suppose that he solicits and bargains for its commission. I should be reluctant to credit the testimony of one who confessed such practices, unless he was strongly corroborated. The true theory should be that the evidence of one who acknowledges his own wrongful and vicious purposes and acts seduce another into the commission of crime should be corroborated in the essentials his testimony. While he may be competent to testify, his credibility is sensibly and materially affected. Unless some such rule prevail, any citizen in the community might be unjustly convicted upon the false testimony of a sharp but unprincipled witness. Character alone will sometimes outweigh the charge of an accuser, unless corroborated. In my opinion, neither governments nor individuals should countenance the violation truth or morality to accomplish any purpose.

Taking all the testimony and circumstances into consideration, and weighing them carefully in equal scales, I cannot decide that the guilt of Mr. Pomeroy is established beyond a reasonable doubt. If I were a judge or a juror, I could not convict upon such testimony. The duty of the committee was to take the testimony and report upon to the Senate, with their convictions of its bearing and effect. They have, in the short time allowed, and under difficulties and inconveniences arising out of their Senatorial duties and engagements on other committees, and some delay in receiving the printed testimony, been prevented from giving as thorough a consideration of the evidence they desired to do. But considering the nature and character of the testimony for the prosecution and defense, with all the surrounding circumstances, I have not been able to conclude, beyond a reasonable doubt, that the charges against Mr. Pomeroy have been sustained.

G. VICKERS.

VIEWS OF MR. THURMAN.

I cannot agree with the report of the majority of the committee. I think that the testimony proves a corrupt offer by Mr. Pomeroy to Senator Simpson, of the Kansas legislature, to obtain the vote of the latter.

I also believe that the testimony convicts Mr. Pomeroy of having attempted to bribe Senator York, of that legislature, to vote for him; that Pomeroy delivered to York $7,000 is not denied. The only material issue between them is, for what purpose was the money

delivered? York says that it was a bribe for his vote. Pomeroy says that it was handed to York to carry it to one Page, whom Pomeroy had promised to assist in starting a national bank. In my judgment the statements of Mr. Pomeroy on this subject are contradictory, are inconsistent with Page's statements; are so opposed to the usual circumstances attending a business transaction, and are so improbable, especially in view of the circumstances attending the Senatorial election, that reliance cannot be placed upon them. Perceiving no good to result from an elaborate statement of the testimony and reasons that bring me to these conclusions, I refrain from making such statement. Were there time for the Senate to consider the subject fully I should feel it my duty to give at large the reasons for my convictions. But this is the last day of the session and of Mr. Pomeroy's Senatorial term. Before the reports can be printed, much le s considered, the session will be at an end. I therefore say no more than to repeat the conclusions to which my mind, has, reluctantly and painfully, been brought.

[Second and third sessions Forty-second Congress, and special session, Mar

POWELL CLAYTON,

Senator from Arkansas from March 25, 1871, *till March* 3

January 9, 1872, the Joint Select Committee to inquire into the Condition of the late ary States reported to the Senate that certain testimony taken by them tended to imp cial character and conduct of Mr. Clayton; that the committee had not prosecuted th yond taking the testimony of two witnesses, deciding that the subject-matter did not the limits of the investigation they were directed to make; that they reported to the Se timony, recommending that the Senate take such action as it deem proper. The Se that the report and testimony be referred to a select committee to investigate and rep charges. June 10, 1872, the committee reported that the investigation was completed committee were unable at that time to arrange the testimony and report back such were relevant; that they held it but the plainest justice to Mr. Clayton that they should the general result of their investigation; that they consequently submitted a partial r ing the right to submit a final report with the testimony, and recommending that the action on the subject until such time; that the charges were not sustained, and that t failed to impeach the Senator's official conduct or character. There was a minority r did not enter into the merits of the case, but held that the action of the committee in that time was premature. February 26, 1873, the committee submitted the evidence final report, recommending the adoption of a resolution that the charges referred to th were not sustained, and that they be discharged from the further consideration of There was a minority report holding that the charge made of procuring his seat by th of money was sustained by the evidence, and that he also obtained 5 votes, which r jority, by giving to electors lucrative offices when he was governor, as a consideral votes. March 25, 1873, the resolution was agreed to.

The history of the case here given consists of a transcript of the proceedings of the Se to it from Senate Journals, 42d Cong., 2d and 3d sess., and the reports of the committee Reports, 3d sess. 42d Cong., No. 512.

Special references to the debates of each day are inserted below.

[Second session of the Forty-second Congress.]

TUESDAY, *January*

Mr. Scott, from the Joint Select Committee to investigate Alleged Outrag ern States, submitted the following report (No. 15):

At a meeting of "the Joint Select Committee to inquire into the Conditio Insurrectionary States, so far as regards the execution of the laws and the s lives and property of the citizens of the United States," convened at their Capitol on the 22d of September, 1871, Messrs. Scott, Pool, and Blair were subcommittee to examine the witnesses then in attendance; which subcomm ized on the 23d of September, 1871, and examined Edward Wheeler, of Ar the 25th of September, 1871, said subcommittee examined William G. Arkansas.

The testimony of these witnesses tends to impeach the official character a of a member of the United States Senate from the State of Arkansas, and a the right of a member of the House of Representatives from that State t seat in the House. Other evidence of the same character was offered, and gentlemen affected by this testimony claimed the right to bring witnesses committee to contradict or explain the same. The committee, however, u eration decided that the subject-matter to which said testimony related di within the limits of the investigation they were directed to make, and theref to prosecute the inquiry any further, discharging a witness who had been and was then awaiting an examination.

The joint select committee, pursuing what they deemed to be the proper ary course, at a meeting on December 21, 1871, adopted the following resolu

"*Resolved*, That the committee report the testimony taken before the comm ing Senator Clayton and Mr. Edwards, a Representative from Arkansas, to and House of Representatives, with a recommendation that each House take as it may deem proper."

Agreeably to this resolution of said joint select committee, the under chairman on the part of the Senate and the chairman on the part of the Ho resentatives, beg leave to submit the testimony* hereto annexed of Edwa and William G. Whipple, both of the State of Arkansas, said Wheeler a

* Found on pages 2–38 of report No. 15, 2d sess. 42d Cong.

having been the only witnesses from that State who were examined by the committee, to the Senate and House of Representatives respectively, for such action as each House may deem advisable.

JOHN SCOTT,
Chairman on the part of the Senate.
LUKE P. POLAND,
Chairman on the part of the House of Representatives.

The Senate proceeded, by unanimous consent, to consider the report, and Mr. Clayton, having addressed the Senate on the subject thereof, concluded his remarks with the request that a select committee be appointed to investigate the allegations against him therein referred to;

Whereupon

Mr. Wright submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the report of the committee and the testimony accompanying be referred to a special committee of three, with power to send for persons and papers, to investigate and report upon the charges therein contained against Hon. Powell Clayton, a member of this body."

Ordered, That the committee be appointed by the Vice-President.

[The debate, including a statement by Mr. Scott and a speech by Mr. Clayton, is found on pages 311–318 of the Congressional Globe, part 1, 2d sess. 42d Cong.]

WEDNESDAY, *January* 10, 1872.

The Vice-President appointed Mr. Wright, Mr. Morrill of Maine, and Mr. Norwood the select committee authorized by the resolution of yesterday to inquire into certain allegations against Hon. Powell Clayton.

MONDAY, *January* 15, 1872.

Mr. Wright, from the select committee to investigate alleged charges against the Hon. Powell Clayton, reported the following resolution:

"*Resolved*, That the committee appointed under the resolution of the Senate of the 9th instant to investigate the charges against the Hon. Powell Clayton have power to employ a clerk, and that there is hereby appropriated out of the contingent fund of the Senate the sum of $2,000, or so much thereof as may be necessary, to defray the expenses of said investigation."

The said resolution was read the first and second times, by unanimous consent, and considered as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time, by unanimous consent.

Resolved, That it pass.

THURSDAY, *March* 28, 1872.

Mr. Wright, from the select committee to inquire into certain allegations against Hon. Powell Clayton, submitted the following resolution; which was read the first and second times by unanimous consent:

"*Resolved*, That the sum of $3,000, or so much thereof as may be necessary for the expenses of the committee to investigate the charges against the Hon. Powell Clayton, is hereby directed to be paid out of the contingent fund of the Senate under the order of the chairman of said committee, the vouchers therefor to be approved by the Committee to Audit and Control the Contingent Expenses of the Senate."

The Senate proceeded to consider the said resolution as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time, by unanimous consent.

Resolved, That it pass.

MONDAY, *June* 10, 1872.

Mr. Morrill, of Maine, from the select committee to inquire into certain allegations against Hon. Powell Clayton, submitted a report* (No. 232) thereon.

Mr. Norwood asked and obtained leave to submit the views of the minority of the committee on the allegations of Mr. Clayton; which were ordered to be printed with the foregoing report (No. 232).

* This report is embodied in the one made by the same committee February 26, 1873.

[Third session of the Forty-second Congress.]

FRIDAY, *January* 10, 1873.

Mr. Wright submitted the following resolution; which was read the first and second times by unanimous consent:

"*Resolved*, That the sum of $1,000, or so much thereof as may be necessary, is hereby appropriated out of the contingent fund of the Senate for the use of the select committee to inquire into certain allegations against the Hon. Powell Clayton."

The Senate proceeded to consider the said resolution as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time, by unanimous consent.

Resolved, That it pass.

WEDNESDAY, *February* 26, 1873.

Mr. Wright, from the select committee to investigate certain charges against the Hon. Powell Clayton, a Senator from the State of Arkansas, submitted a report (No. 512) accompanied by the following resolution:

"*Resolved*, That the charges made and referred to the select committee for investigation affecting the official character and conduct of the Hon. Powell Clayton are not sustained, and that the committee be discharged from their further consideration."

Ordered, That the report and testimony taken before the said committee be printed.

[Remarks by Mr. Wright are found on page 1785 of the Congressional Globe, part 3, 3d sess. 42d Cong.]

SATURDAY, *March* 1, 1873.

Mr. Norwood asked and obtained leave of the Senate to present the views of the minority of the select committee to inquire into certain allegations against Hon. Powell Clayton; which were ordered to be printed to accompany the report of the committee (No. 512).

REPORT OF COMMITTEE.*

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1873.—Ordered to be printed.

Mr. Wright, from the committee to inquire into certain allegations against Hon. Powell Clayton, submitted the following report:

The undersigned select committee, to whom was assigned the duty of inquiring into certain charges against the Hon. Powell Clayton, a member of this body from the State of Arkansas, have had the same under consideration, and submit the following final report:

On the 10th of June last they submitted what they denominated, and which was accepted as a partial report, which they here incorporate to avoid repetition, and that the conclusion at which they have finally arrived may be the more readily understood:

JUNE 10, 1872.—Ordered to be printed.

Mr. Morrill, of Maine, on behalf of the chairman, Mr. Wright, of Iowa, from the committee to inquire into certain allegations against Hon. Powell Clayton, submitted the following report:

The special committee on whom was imposed the duty of investigating certain charges against the Hon. Powell Clayton, a member of this body, beg leave to submit the following partial report:

On the 9th of January, 1872, Mr. Scott, from the "Joint Select Committee to inquire into the Condition of the late Insurrectionary States," &c., reported to the Senate that in the prosecution of their inquiries the testimony of certain witnesses (Edward Wheeler and William G. Whipple, of Arkansas) "tended to impeach the official character and conduct of a member of this body," but as they held that "the subject-matter to which said testimony related did not come within the limits of the investigation they were directed to make," they declined to hear other witnesses, and thereupon adopted the following resolution:

"*Resolved*, That the committee report the testimony taken before the committee affecting Senator Clayton and Mr Edwards, a Representative from Arkansas, to the Senate and House of Representatives, with a recommendation that each House take such action as it may deem proper."

The testimony of Wheeler and Whipple referred to in the report and resolution they also reported to the Senate for such action as might be deemed advisable, and on the same day the Senate adopted the following resolution:

"*Resolved*, That the report of the committee and the testimony accompanying be referred to special committee of three, with power to send for persons and papers, to investigate and report upon the charges therein contained against Hon. Powell Clayton, a member of this body."

Pursuant to the command of the resolution, and the powers thereby conferred, the committee met on the 18th day of January, and entered upon the discharge of their duties.

James L. Hodges, esq., of Arkansas, appeared before them and asked leave to prosecute the charges and was permitted to do so, and accordingly appeared by himself and counsel, S. M. Barnes, esq.

* The testimony, pages 21-377 of the report, is here omitted.

Senator Clayton also asked to appear as well in person as by counsel, which request was granted, and he designated as such counsel the Hon. Thomas M. Bowen and Hon. John McClure of Arkansas.

Witnesses were subpœnaed from time to time, upon the request of the parties and as the committee deemed necessary. It is proper to state that the parties each demanded the attendance of many other witnesses, which demand was declined but not until the committee were thoroughly satisfied that they were possessed of the essential facts touching the matters submitted for their investigation. They held almost daily sessions from the date last named until and including the 11th day of May, when the testimony closed. During this day they examined thirty-eight witnesses, and have before them, in form of documents and the testimony of said witnesses, matter covering about 5,000 manuscript pages.

We are justified in saying that much of it was taken and received *de bene esse*. In other words, for the prosecution it was claimed that they would be able to show certain combinations, conspiracies, and corrupt agreements which, if established, would make such testimony competent and relevant. For the defense it was insisted that this state of case could not be shown, and in no event could such testimony be admissible under the resolution of the Senate and the matter submitted for our investigation, but in view of the possibility of its being so held they submitted their testimony to meet the case supposed by the prosecution.

As it was impossible to say in advance what, in this respect, the testimony might finally establish, and as witnesses were in many instances here from a great distance and anxious to leave, we deemed it better to take the testimony, leaving the question of its ultimate relevancy to be determined when deciding the whole case. This state of the record rendered it necessary to examine with care the testimony of very many of the witnesses to enable us to determine just what was and was not competent in view of the issues made.

This work, to some extent, remains unperformed. It could not well be otherwise when we refer to the time the testimony closed, and the other and constant duties pressing upon each member of the committee. As the session is drawing to a close, however, and we hold it but the plainest justice to a member of this body that it should at least be known what was the general result of our investigation, we have deemed it best to submit the same to the Senate. We say this is due him, the Senate, and the country, and shall assume that this will be accepted as true by all, without entering into argument in support of a proposition so plain. The charges affect the standing and influence of one who has the equal dignity and responsibility of any other member of this body before the country and his constituency. If not sustained, it is eminently proper that he should be relieved. If sustained, then the Senate owes it to itself, its own dignity, its own purity, its own self-respect, that he should be removed, and the people of Arkansas have upon this floor one who may be their fit, proper, and chosen representative.

Thus impressed and influenced, though unable, for reasons above stated, to arrange the testimony and report back such parts as they hold to be proper and relevant, and yet able to reach a conclusion, to them satisfactory, from their recollection of the evidence at the time it was being submitted, and their subsequent examination—we say, thus impressed, we have deemed it our duty to submit this partial report, reserving the right, at a time when the pressure of other duties shall not be so great, to submit with the testimony a further and final report.

If it should be asked, Why not now submit all the testimony? we answer: First, because we know that much of it can have no possible bearing upon the question before us and the Senate, and its publication would involve a large and most unnecessary expense. Second. No useful end is to be gained by giving to the country a mass of testimony which only serves to show the bitterness of personal feeling existing between those prosecuting and their friends on one side, and the party accused and his friends on the other, which had its birth in the zeal of opposing political factions, to blacken and disparage the party integrity of those opposing them; which would only tend to still further disturb and distract the citizens of the State where they reside, and render more difficult the restoration of that peace and quiet so essential in all the States, and especially those so lately in insurrection. And this course is the more justified from a conviction, which we cannot now escape, that not a little of it was offered by the parties more with the view of making political capital against each other than in the hope or belief that it could have any influence upon the committee, or throw light upon the subject-matter under investigation. We do not propose to be the instrument of a purpose so foreign, and we most respectfully submit that the Senate should not and will not lend itself to the publication in advance of a mass of testimony which in no manner tends to elucidate the real question before them, and which, if published, while it might gratify the malevolence of parties, could not possibly serve any useful end. It would be worse than waste-paper.

We therefore submit this report, at present withholding the testimony, recommending that action shall be delayed until we are able to more carefully arrange the immense record before us, and present it in a form which will enable the Senate to act with greater safety and intelligence.

And now having stated something of the work performed and the grounds which seem to us to justify the course pursued, we come to the consideration of those matters which were submitted for our investigation and a statement of the conclusion reached. In doing this it seems to be eminently proper, and indeed logically necessary, to ascertain and settle the nature and scope of the charges made and the powers of the committee under the order of reference.

It will be seen that the report of the committee, which led to the present inquiry, states that the testimony submitted to them tended to impeach the official character and conduct of Senator Clayton. The resolution under which this committee is acting directs that the report of Mr. Scott and the accompanying testimony be referred, with power to send for persons and papers to investigate the charges therein contained. We therefore necessarily go to the report thus referred in the first instance, to see what the charges are. But here we find nothing, for it is only stated generally that the testimony before them tended to impeach the official character and conduct of Senator Clayton. All that is of particular value thus far or in this language is that the charges related to his official character and conduct. This of course must mean his official character and conduct as a Senator. With his official acts in other positions we have nothing to do, except as they may bear upon his office as Senator. To illustrate, he was governor of the State of Arkansas up to the time of his election as a member of this body. Now, whether his conduct and character in the gubernatorial office was such as to merit condemnation or praise, whether his administration of that office was honest or dishonest, wise or unwise, corrupt or otherwise, is a matter of no moment whatever, except as it may bear, in some legitimate manner, upon his conduct and character in his present position.

Assuming for the present that our inquiries are limited to matters subsequent to his election, not, of course, rejecting those antecedents, so far as they reflect light upon subsequent acts, we are led to inquire what these are; and here we are remitted to the testimony of Wheeler and Whipple, for as there are no specific charges in the report itself, the testimony of these witnesses must alone stand in the place of charges, the information, or indictment. Than this, few things could be more indefinite or unsatisfactory. Without, by any means, conceding that any one should be held to answer charges thus made, so entirely wanting in everything approximating conciseness, clearness, or definiteness, we advert very briefly to some matters to which these witnesses most vaguely refer.

First. It is suggested rather than strongly claimed that Senator Clayton was indicted by the grand jury of the United States circuit court for Arkansas, in April, 1871, for a violation of the twenty-second section of the enforcement act (16 Stat. at Large, page 145), in granting a certificate of election, as governor, to General John Edwards, showing his election as a member of the House of Representatives in the Congress of the United States. The facts in connection with the issuing of this certificate will come under review in a subsequent part of this report, and we content ourselves at present with stating conclusions. And, first, the mere finding of the indictment would not of course so tend to impeach his official character and conduct, nor of course actually impeach it, as to demand action at the hands of the Senate. In the next place, if such finding possessed any significance, it would lose it all, where, as the testimony and the record here conclusively show, he was discharged therefrom by the judgment of the court at a subsequent term (in October last) under a demurrer to the indictment; not for any formal or technical defect, but upon the broad and substantive ground, to state it briefly, that the governor of a State is not an "officer of election," within the meaning of said election.

This being so, by the judgment of the court he stood acquitted and discharged of course of all legal wrong. Then, if an officer, and the act was not fraudulent—that is, if he did not "fraudulently make any false certificate"—there was no criminal liability, and if there was no corrupt conduct or fraudulent act in this connection, it is submitted that all inquiry in this direction may be dismissed. But more of this hereafter.

In the second place, it is suggested, again most vaguely—it cannot be conceded to have the dignity of a specific charge—that he, by himself or friends, tampered with the grand jury finding the indictment. Senator Clayton was in Washington City at the time the indictment was found, and there is scarcely a scintilla of evidence that he had knowledge that such a thing was contemplated or threatened. There is certainly no pretense of proof that he, by himself, or others acting for him, or at his instance or request, made even the least attempt to influence the action of the grand jury presenting the indictment, and least of all would it be claimed that anything was done by himself, or any one ever so remotely connected with him, which could by possibility be regarded as either criminally or morally wrong. And when we add that it is worse than the sheerest pretense that anything there attempted was in the least connected with his official conduct or character, we dismiss this part of the case.

In the next place it is attempted to be shown that he improperly used his official position and influence as Senator to procure the removal of the witness (Whipple) from his office of district attorney, and General Catterson as marshal of the district of Arkansas. Whipple was district attorney and Catterson marshal at the time of finding the indictment. Both these gentlemen had been more or less active in their opposition to Senator Clayton's election to the Senate through a contest almost unprecedented in its bitterness, whether viewed politically or personally. This was particularly true of Colonel Whipple. Senator Clayton may have been influenced, and doubtless was, not a little, in his efforts to procure their removal by their known opposition to him, as also by what he esteemed their unwarranted course in connection with the procurement of the indictment.

It is not material to inquire whether there was anything in their conduct touching the latter matter to warrant his feelings and judgment, since he did no more than what other Senators are constantly in the habit of doing touching the displacement of their enemies and the appointment of their friends. That the action of these parties in connection with the indictment was not the moving cause of his opposition is clear enough from the fact that he was seeking their removal before it was presented, as abundantly appears from their own testimony, wherein the alleged charge is found. In his conduct in this respect we fail to see any official misconduct, and especially so as it appears that since these removals the Executive and Department of Justice have been successively and more than once, appealed to by Colonel Whipple and General Catterson and their friends for reinstatement, and have been as frequently unsuccessful. Whether it is right or wrong for one in his position to use his official influence to procure removals is not for us to say. We only state as we find that he exercised the right or privilege taken by, if not conceded to, others; an act which, if regarded as tending to "impeach his official character and conduct," would be equally so, probably, of every member of this body.

Turning now from these matters arising subsequent to the election of Senator Clayton we come to the case made touching his election, and here a preliminary inquiry arises: What have we to do with that election? Recurring to the resolution raising the committee, and which must be accepted as the charter of our power, we remark again that the report of Mr. Scott says that the testimony (and to which we must go to ascertain the charges, for there is nothing else) "tends to impeach his official conduct and character." Then, the resolution under which we are acting directs us to investigate the charges therein contained against Senator Clayton as a member of this body. Now, giving to the record a fair and just construction, have we anything to do with his election or the circumstances connected therewith? Upon this subject at least one member of the committee entertains the gravest doubts. The argument suggesting and supporting these doubts is as follows:

In respect to the subject-matter referred to a committee, the rule is that they are not at liberty to entertain any proposition or go into any inquiry which does not come within the direct purpose for which the committee was appointed, as expressly or clearly implied in the authority conferred upon it, or which is not grounded upon some paper which is referred to the consideration of the committee. (Cushing's L. and P. of Leg. Pro., ss. 1906.) This is upon the clear principle that a committee being a creatnre of the body giving it life, is bound by and is not at liberty to depart from the order of reference. If any other rule were adopted, and it could depart from the order of reference, business would, of course, be at an end, and endless confusion and contests between the body and the committee would ensue (ss. 1907).

Now, it is suggested that inasmuch as the report of the "joint select committee" by Mr. Scott referred alone to testimony tending to impeach the official character and conduct of Senator Clayton, the order of reference took in and contemplated such matters alone, and that the resolution raising this committee must be construed in the light of that report and the subject-matter of inquiry be thus limited; and hence, when it is directed that the committee shall investigate the charges contained in said report (including the testimony of Wheeler and Whipple), it was intended to cover and include only those bearing upon such official conduct and character, for in that report there is nothing said about fraud or illegality in his election. But here it is, perhaps, answered that the proposed inquiry is grounded upon the paper (the testimony aforesaid) referred for our consideration. To this the reply is: true, but that paper must properly be construed as referring to such charges only as relate to or are connected with the principal inquiry; that is, official conduct or character. If not, why did the committee omit all reference to his election and the circumstances attending the same? The answer is they had power and authority themselves to inquire into all matters bearing upon the state of affairs in the State, including frauds in elections, but not to such as bore upon the conduct of a member of the Senate or House after his election.

Conceding, however, that this view limits the inquiry unjustly, let us look at the charges themselves. And here the already great length of this report admonishes us to brevity, and especially so as, when the testimony shall be finally summed up, it will necessarily demand a large portion of

our attention. This part of the case suggests two inquiries: First. As to matters occurring antecedent to the assembling of the general assembly which elected Senator Clayton. Second. Those immediately leading to and connected therewith.

Upon the first we are not disposed to enter. Our warrant for this is found in the principle obtaining and the nature of the testimony, or rather the absence of it. It seems to us that upon principle we cannot enter upon the numberless inquiries which would always be suggested in cases of this character preceding the election of the members whose duty it is to elect a Senator, unless such conduct and transactions clearly relate to and bear immediately upon the alleged frauds connected with such Senator's election. Not only so, but it would seem that they must so color the transaction of the final election of the Senator as to lead to the conclusion that but for them the result would have been different. Thus, suppose Senator Clayton used reprehensible means with the hope of securing the election of some member or members in one or more districts, and such persons were either not elected or failed to vote for him, or, if voting for him, he had a clear majority outside of those improperly elected, would any one say or claim that his seat could be declared vacant? Or suppose, as in the case before us, that the two houses of the Arkansas legislature, being the judges of the election, qualification, and return of their own members, have heard and investigated all alleged frauds and given the members their seats, can this committee or the Senate go back of that action, and in this inquiry, whether treating it as a proceeding direct or collateral, say that such members were improperly elected, returned by the use of corrupt means, even if originating with Senator Clayton himself, and that therefore he was not legally elected? The statement of such propositions furnishes its own answer. Neither legally nor logically could it be claimed that this committee would be called upon to go into a field so boundless, and which when explored would throw no legitimate light upon the controversy before us. And therefore we now incline to the opinion that all the testimony bearing upon the transactions before the assembling of the legislature, except as it is connected with and gives color to the election of Senator, except as it tends to show that it was brought about by fraudulent and corrupt means then used, may be dismissed. A large portion of the testimony is of this character. As we read the record Senator Clayton received a clear majority in each branch of the general assembly outside of those claimed to be thus fraudulently elected, and some of those whose elections are thus assailed voted against him, and this alone is all that need be stated upon this subject. The efforts in this direction have been most extraordinary—the statements of numberless persons having been introduced upon the theory that, as they were friends of Senator Clayton, friendly to his election and exerting themselves in his behalf—so there was a so-called conspiracy, and what all and each of said conspirators said would bind all. To admit that a conspiracy has been shown in any legal sense would be to set at defiance all the rules of law governing in such cases, and make every candidate in a bitter and protracted ntest of this character responsible for all that was said and done by all his friends, the foolish and the discreet, the good and the bad, the honest and the dishonest, alike. While we would do nothing to encourage fraud or to shield from responsibility any one seeking official position, and especially a position so high as a seat in this body, we would not enter a field of mere speculation and adopt a rule which is the most doubtful in theory and finds no support in practice or precedent.

It only remains to inquire into the alleged frauds connected with the election. And here the principal, if not only one, is that Senator (then Governor) Clayton issued to Hon. John Edwards a certificate of election to the House of Representatives of the present Congress, upon a corrupt bargain or agreement that he was to receive in return for the same the support of the Democratic members of the general assembly. If this charge is not maintained, we hazard but very little in saying that there is nothing left of this case. And a very brief statement will show how utterly groundless it is in fact.

With the question whether Edwards was or was not in fact elected we have nothing to do. He was accepted and recognized as the Democratic candidate for Congress, his competitor being Hon. Thomas Boles. Governor Clayton supported Boles in that election by his voice and influence. At one time there were two Republican candidates in the district for Congress (Judge Boles and Judge Searles). Through the influence of Governor Clayton and his friends, Judge Searles was induced to withdraw, leaving the field to Judge Boles, and this, too, notwithstanding Judge Searles was recognized as the more pronounced friend of the governor. That the object was to promote harmony and secure ultimate political success seems to be fairly well established.

In Pulaski County especially the Republican party was divided, one side being the warm and devoted friends of Governor Clayton, the other his bitter enemies. To some extent this state of things obtained in other parts of the State. At the election in this county in 1870, and particularly in the city of Little Rock, it was alleged that certain frauds intervened whereby illegal votes were cast for Boles, or if the votes were not illegal they were received and counted by judges selected without authority of law, and that their action was both illegal and irregular. Into all these matters we do not propose to enter, as our purpose in this connection is to state some facts generally, and then leave this part of the case.

By the statute of Arkansas it is the duty of the secretary of state, in presence of the governor, within thirty days after the time allowed for making the returns of the election, if the returns are all received, to cast up and arrange the votes from the several counties for member of Congress; and of the governor, immediately thereafter, to issue his proclamation declaring the person having the highest number of votes to be duly elected, and he is also required to grant a certificate under the seal of the State to the person so elected.

From the returns made to the office of the secretary of state there was no question as to the result. Boles was clearly elected. The duty of the governor under the law is ministerial, not judicial. By strict law he has no power to reject votes, nor to direct the counting of those returned by other than the proper officers. In this case, however, it was brought to his attention that frauds had been perpetrated, or, at least, irregularities had intervened, which should be examined into. In our opinion, under the law he had no power to enter upon such an inquiry; nor do we understand that he did.

A case was pending in the supreme court of the State involving the legality of the returns made from certain wards in the city of Little Rock and some precincts in the county, the determination of which was regarded as important in settling whether Boles or Edwards was elected to Congress. The governor determined to wait, and did wait, that decision. The same question was brought to the attention of the legislature and referred to a committee, and he declared his purpose to await that action. In the wards referred to two polls were opened, one by the judges selected by the bystanders, the other by the judges regularly appointed or chosen. At the first the votes were almost unanimously for Boles, at the other very largely for Edwards. Counting the first and excluding the second, Boles was undoubtedly elected; if the latter were counted and the first excluded, and excluding votes for Boles in some other places, which it was claimed were fraudulent, then it was insisted that Edwards was elected.

By the decision of the supreme court and the report of the committee in the legislature, the elections held by the regular judges were determined to be the only legal ones, and following these decisions in part the governor gave the certificate to Edwards. In this he may have been mistaken,

But it would certainly be most extraordinary to say that the executive of a State may not follow the decision of its highest judicial tribunal—that he may not act upon the proceedings of the legislative branch.

As to the returns and the election, there was intense excitement. Factions were arrayed against each other, and each charging frauds without stint upon the other. If Governer Clayton mistook his duty, it was, at least, quite as much on the side of law and order as to have acted without investigation and in disregard of the action of the other co-ordinate departments of the State government. If it is said—and this is the effort, from the testimony—that the judges and legislature were actuated by base, unworthy, and corrupt motives; that they were all moved by him and in his interest, we can only answer that a charge so serious is neither probable nor reasonable. It would certainly require the very strongest proof to justify us in believing a charge so sweeping, affecting, as it would, almost the legality and validity of the entire acts of its officers, legislative, executive, and judicial.

But this is not all. General Edwards was given the certificate on the 20th of February, 1871. Governor Clayton was not elected until the 15th of March. True, he was elected at what is known as his first election on the 11th of January, 1871. But this election he declined. He holds his place now under the second election. At this but one Democrat (and he of doubtful political status) in the house voted for him, and he swears most positively that his vote was not influenced by the Edwards matter in the least. In the senate, if any voted for him, he had, without counting them, a clear majority of all, and as to those voting for him, if any, there is no evidence that they cared anything more for Edwards than Boles.

It appears, then—

First. That Clayton was the political friend of Boles and favored his election.

Second. That in issuing the certificate he discharged what seemed to be, and what he had good reason to believe to be, his duty, in following the decision of the supreme court and the action of the legislature.

Third. Nothing approximating a corrupt motive in exercising the power to inquire into the legality of the returns is shown.

Fourth. He gave Edwards the certificate before he was elected the second time, and after he had announced, at least, a contingent purpose of remaining in the office of governor.

Fifth. There was no necessity for a bargain with the Democrats in the legislature, for they were but too willing; being in the minority and without hope of being able to elect one of their own political friends, in view of what they considered to be their wrongs and the wrongs of their friends at the hands of the governor, we say they were but too willing to have him elected to the Senate and thus secure his resignation as governor, trusting and believing that a change could not possibly be worse for them.

Sixth. He did not receive any votes under any such agreement, and, least of all, any number sufficient to influence the result. And hence we conclude that nothing can be plainer or more manifest than that this charge is totally and entirely unsustained.

Something is said in the testimony of Whipple about railroad subsidies and bonds, and the action of Governor Clayton in that connection. This relates rather to his action as governor, with which we have nothing to do, than to the Senatorial election. So it is attempted to show or start the theory that he procured the resignation of White as secretary of state, and appointed Johnson, the lieutenant-governor, to the place made vacant by White, also the election of Hadley as president of the senate—all in pursuance of a corrupt arrangement by which he was to be elected to the Senate. It must be admitted that the stroke was a bold and most successful one. Governor Clayton had said to his friends from the stump and elsewhere that, while he was a candidate for the Senate and was desirous of success, he would never take an election and leave the State administration in the hands of Lieutenant-Governor Johnson. He was elected Senator in January and an effort was then being made in the courts to remove the lieutenant-governor. This was unsuccessful, and Governor Clayton declined the office of Senator. At the first election several of the Democratic members voted for him for reasons already stated. At this time and for weeks all parties were excited; the members were leaving the legislature to break a quorum; crimination and recrimination were the order of the day, and each party was struggling for supremacy. Everything was in disorder and confusion. The result no man could tell. At times they were apparently on the eve of an outbreak, if not of revolution Then it was that White resigned his office of secretary of state. He was the friend of Governor Clayton, but apparently not more than of the other side—wanted to and was willing to serve him. Johnson was willing to take that place and vacate that of lieutenant-governor and he was accordingly appointed. Hadley was elected presiding officer of the senate; Clayton was made Senator, and Hadley became governor.

If in all these changes there was nothing corrupt upon the part of Governor Clayton, then they are as harmless, so far as this investigation is concerned, as if they had occurred years before, or in another State, and without his suggestion or knowledge. The only testimony which tends to show anything of the kind is that of White, who swears that months afterward he received some money through Senator Clayton, but he explains what it was for, and states positively that it was not in consideration of his vacating the office of secretary of state.

But, without more, we here leave the case. In our opinion the charges, if such they can be called, are not sustained. The testimony fails to impeach the Senator's official conduct or character. All which we shall take occasion to show by a fuller reference to the testimony and record, when other duties will permit and it may be the pleasure of the Senate to receive the same.

Respectfully submitted.

GEO. G. WRIGHT.

I concur in the foregoing, as touching the testimony which "tends to impeach the official character and conduct of a member of the United States Senate," reserving a recurrence to the mass of testimony when opportunity offers for a full report.

LOT M. MORRILL.

VIEWS OF THE MINORITY.

JUNE 10, 1872.—Ordered to be printed, to accompany the report of the committee to inquire into certain allegations against Hon. Powell Clayton.

Mr. Norwood submitted the following as the views of the minority:

Protest against the report of the majority of the committee appointed to investigate the charges against Hon. Powell Clayton.

As a member of the special committee of three, appointed by the Senate to investigate certain charges made against Hon. Powell Clayton, United States Senator, and to report the result of such

investigation to the Senate, I most respectfully protest against the action of the majority of that committee in submitting their report at this time; and in justification of my course and in support of this protest, I beg herewith to submit the following facts and considerations:

This investigation, as stated in the report of said majority, commenced on the 18th day of January last and continued almost daily (Sundays excepted) until the 14th day of May. Thirty-eight witnesses were examined, and their testimony averages, each, about 125 manuscript foolscap pages. During the examination but two of the committee were generally present. Sometimes all were present, and often, by consent of Senator Clayton and James L. Hodges, who occupied the positions before the committee of prosecutor and defendant, but one of the committee was in attendance, the three alternating, so that no one member of the committee was present during the whole of the investigation. Hence no one member of the committee heard the whole testimony. Duty compelled our attendance in the Senate Chamber, and at no time did we sit while the Senate was in session. And as we sat generally from 10 a. m. to the opening of the session, many other duties made it necessary for one and another of the committee to be absent.

A few days after the majority of the committee determined to close the investigation, the chairman convened the committee to determine what course should then be taken The resolution fixing the day of adjournment on the 29th of May was then in force, and we supposed Congress would adjourn on that day. In view of the immense volume of the evidence, which no one member of the committee had read through, in consideration of the brief time to elapse before the day then set for adjournment, and also of the determination of the committee to revise the record before having it printed, for the purpose of expunging such as might be irrelevant and much that was conversational between the counsel and the committee during the examination of witnesses, and thus to reduce the volume to a condensed and readable form, the committee at that time divided the manuscript into three parts, and each member took a third for the purpose of revising it and noting such portions as he considered might be expunged without detriment to the record. We discussed the probability of being able to make a report at the present session, and in view of this preliminary labor of expurgation, the shortness of the time allowed, as the day for adjournment was then set, and of our engagements in the Senate, then convening at 11 a. m. and holding night sessions, we saw no prospect of completing our labor so as to report before the next session of Congress. It was further agreed that we should, after examining the evidence and noting the irrelevant matter, come together at a time left indefinite, and consider well whatever each had marked as in his judgment unnecessary to the record, and the remainder would then be printed. We would then examine and weigh the relevant testimony, and make a report to the Senate.

Thus the matter remained until about a week ago, when the chairman assembled the committee and suggested that a report be made. In consideration of all that had occurred, as stated above, and of the fact that the committee had taken no action on the testimony preparatory to making a fair, full, and final report, I moved that the testimony be printed and that the original purpose of the committee be carried out, and that a report should be made at the next session of Congress. This suggestion was not adopted, and on the 3d day of June instant the chairman submitted to the committee for its action the document now presented to the Senate as the report of the majority.

The majority admit that a careful examination of the testimony has not been made; that they submit "a conclusion reached from their recollection of the evidence at the time it was submitted and their subsequent examination;" that the report is only "partial;" that they intend to make "a further and final report;" that they withhold the testimony, and recommend that the Senate take no action on their report until it can "act with greater safety and intelligence."

I do not intend to enter on a consideration of the merits of this case. I regard the action of the majority of the committee as premature (as they admit) and unprecedented. What power has a special committee to make a report by halves? Besides, what necessity exists for a report at this time? It is true the majority say that justice to the Senator accused requires it. But why and how? What injury can follow by waiting until our labor could be completed? Confessedly it is incomplete. Confessedly the evidence must be thoroughly examined and another report must be made.

The report submitted refers to but a small portion of the material evidence taken by the committee, and while I will not express an opinion as to the effect of the testimony until I shall have given it that careful and serious consideration which the gravity of the charge and the dignity of the Senate require and demand, I will say that I think the conclusion of the majority very hastily drawn.

Referring to the testimony of Wheeler and Whipple, they extract the following as constituting the charges (if such they can be called) upon which this investigation was instituted.

CERTIFICATE TO EDWARDS.

[Extract from the testimony of Edward Wheeler.]

"Examined by Mr. BLAIR:

"Question. What was the reason assigned for Clayton acting as he did?—Answer. It was generally regarded that he expected by supporting Edwards to gain some Democratic votes in the legislature for United States Senator.

"Q. That it was for his own interest and to secure his own election as Senator?—A. It was so understood; yes, sir.

"Q. That is the explanation of it?—A. That is, the object of the frauds in Hot Springs County was to put Clayton men in the legislature; the object of the frauds in Pulaski County was to put Democrats in the legislature, for the Clayton faction had a very small vote in that county and the Democrats were given seats in the legislature. It was claimed, and it has been sworn to by some prominent Democrats, that General Edwards was given the certificate upon a trade made by Senator Clayton that certain parties would not contest certain seats in the legislature. That was the testimony developed in the investigation made in the Boles and Edwards contested-election case."

[Extract from the testimony of William G. Whipple.]

"Examined by Mr. BLAIR:

"Question. What was the motive of the governor in giving this certificate to a man

who was not elected?—Answer. Of course it is very hard to tell what his motive was. It is generally understood that it was done in pursuance of a trade.

"Q. Of a trade?—A. Yes, sir; that is the general understanding.

"Q. What was the trade?—A. That the Democratic members of the legislature should support him for the Senate of the United States.

"Q. Did they do it?—A. Yes, sir; they did.

"Q. And the governor carried out his part of the bargain?—A. Yes, sir; it seems very plain that he did that.

"Examined by the CHAIRMAN (Mr. Scott):

"Q. There was a majority of Republicans in the legislature that elected Governor Clayton to the United States Senate?—A. Yes, sir.

"Q. And when these two divisions came into conflict in regard to electing a United States Senator, you say the Clayton men entered into a corrupt combination with the Democrats by which the Democrats agreed to vote for Governor Clayton for the Senate of the United States in consideration of Governor Clayton giving a certificate of election to the Democratic candidate for Congress in the third Congressional district of the State?—A. That is believed by many persons.

"Q. You have already stated that here as the general belief in the State?—A. Yes, sir.

"Q. Is that your belief?—A. Well, it is my belief that Clayton made some trade with the Democrats. Precisely what were the terms of the trade I would not undertake to say.

"Q. You have already put it in that form in your testimony. I want to understand if that is your belief.—A. I do not think I put it in exactly that form.

"Q. You stated that to be the general belief.—A. I think it is the general belief.

"Q. Do you include yourself among those who entertain that belief?—A. Well, I have reason to believe it, and I know of no reason why it is not true."

ELECTION TO THE SENATE.

[Extract from the testimony of William G. Whipple.]

"Examined by Mr. BLAIR:

"Question. What condition of affairs in Pulaski County was disclosed by the investigation, so far as it went?—Answer. There were shown many instances of fraudulent registration; parties who were not voters were awarded certificates by the registrars; there were many cases of parties registered in the wrong ward of the city or the wrong precinct in the county. For instance, parties would present themselves in the Second ward to be registered, and would be registered in Big Rock Township. There were many instances of that kind, where parties were registered in the wrong places.

"Q. In whose interest were these frauds perpetrated?—A. In the interest of what was known as the Clayton party.

"Q. For the purpose of electing men who would support him for Senator of the United States?—A. Yes, sir; and in many cases to defeat the Republican candidates.

"Q. Who would not vote for him as Senator?—A. Who would not pledge themselves to support him for the United States Senate. That was the case in Pulaski County where the Clayton vote was understood to have been thrown to secure the election of Democratic candidates for the legislature as against the Republican candidates, because the former were expected to support Clayton and the latter were not.

"Q. Did they support him?—A. They did support him; yes, sir, they voted for him for United States Senator.

"Q. As I understand, Governor Clayton was elected Senator, and declined to accept?—A. Yes, sir.

"Q. What was his reason for declining to accept when first elected?—A. What reason did he assign?

"Q. Yes.—A. The reason that he assigned was that the interests of the Republican party in Arkansas required that he should remain governor. But that was not the general understanding at all.

"Q. What was the general understanding on the subject?—A. The general understanding was that he declined the election to the United States Senate because, if he went to the Senate at that time, he could not leave the government of the State in the hands of his friends.

"Q. Who would have been governor if he had not declined to go to the Senate at that time?—A. The lieutenant-governor, James M. Johnson.

"Q. Was he a friend of Clayton?—A. He was not a friend of Clayton at that time he was a Republican.

"Q. How did Clayton subsequently arrange that, when elected the second time?—A. On the eve of the second election, I think the day before, Lieutenant-Governor John

resigned his office as lieutenant-governor, and was appointed secretary of state by Governor Clayton, Secretary White, the previous secretary, having resigned. Thereupon, Senator Hadley was elected president *pro tempore* of the senate, and became acting governor of the State upon the election of Governor Clayton to the United States Senate.

"Q. He is understood to be a friend of Clayton?—A. Governor Hadley?

"Q. Yes.—A. Yes, sir; he is understood to be a Clayton man, out and out."

INDICTMENT.

[Extract from the testimony of Edward Wheeler.]

"By Mr. BLAIR:

"Question. Were you a member of the grand jury of the United States court last spring?—Answer. Yes, sir; and its foreman.

"Q. When was the sesion of that court held?—A. It commenced on the 10th of April last.

"Q. Were any indictments found by that grand jury under the act of Congress known as the 'enforcement act?'—A. Yes, sir; there were several found.

"Q. Against whom? Who were indicted?—A. There were six or seven different parties indicted in Hot Springs County; judges, and clerks of elections, and registrars; also some six or seven in Clark County for frauds in elections; and Governor Clayton, of Pulaski County, was indicted.

"Q. What was the offense for which Governor Clayton was indicted, and what was the evidence upon which he was indicted?—A. The evidence was entirely documentary, being the returns in the office of the secretary of state. The witnesses were the ex-secretary of state and the deputy secretary of state. They brought the returns, or a tabular statement of them sworn to, and laid it before the grand jury.

"Q. Those returns were of what election, and in what counties?—A. In the election for members of the Forty-second Congress, and in the counties composing the third Congressional district of the State of Arkansas. I do not now remember all of the counties by name. It is the district in which the county of Pulaski is embraced; our county is one of the counties of the third Congressional district.

"Q. What was the action of Governor Clayton that led to his indictment?—A. The first that I, or any member of the grand jury, knew of the matter was the bringing of the case to our attention by the district attorney; he came to me with a list of witnesses, three in number, which he wished to have subpœnaed. He said the case had been called to his notice, and he wanted it brought before the grand jury for examination. I subpœnaed the three witnesses: the ex-secretary of state, the deputy secretary of state, and General Edwards, the person to whom the certificate of election for Congress had been given by Governor Clayton. It was claimed that Governor Clayton had violated certain sections of the enforcement act in giving the certificate of election to General Edwards, when the returns, as exhibited to us by the secretary of state, showed that Judge Boles had been elected. General Edwards presented a copy of his certificate of election, and of the proclamation of the governor, stating that, according to the returns on file in the office of the secretary of state, General Edwards had been elected. But the returns, as exhibited to us, showed that Judge Boles was elected by some 2,130 votes, I think it was, on the full vote, counting the votes at both polls. There were allegations of fraud on both sides. But giving the governor the benefit of every doubt, the least majority for Judge Boles that we could figure out was some 800 or 900; I forget the exact figures. That was according to the returns shown to us; and upon that showing the indictment was found.

"Q. Under what part of the act was the indictment found?—A. I think it was the twenty-second section of the enforcement act. And our State laws require the canvass of the returns to be made by the governor, assisted by the secretary of state; the governor is made the canvassing officer. The law was explained to us by the district attorney, and it was claimed that the governor had violated the twenty-second section, I think it was, of the enforcement act; the one providing that if any officer shall issue a fraudulent certificate of election to any party, he shall be amenable, &c."

Again:

"Q. And the grand jury found that that was a fraudulent certificate?—A. They found that this proclamation of the governor, issuing the certificate of election to Edwards, was not in accordance with the returns in the office of the secretary of state as laid before us."

"By the CHAIRMAN:

"Q. What was the specific offense with which the governor was charged?—A. I think the district attorney, who is in this city, has a copy of the indictment, and he can probably explain these matters much better than I can."

Again:

"Q. The other case of indictment you have referred to is one against Governor Clay-

ton, for giving the certificate you have read?—A. For furnishing a certificate of election to John Edwards.

"Q. The State law, you say, makes the governor the canvasser of the returns?—A. It makes it the duty of the governor, within thirty days after the election, to make a canvass of the votes, make proclamation, and issue certificates of election.

"Q. In the discharge of that duty is the secretary of state associated with him in any capacity which would invest him with authority to decide; or does the governor merely consult him?—A. His duty is merely clerical; the governor is the canvassing officer proper. I think the law states that the canvass shall be made by the secretary of state in the presence of the governor, and the governor shall, by proclamation, announce the result.

"Q. It makes it the duty of the governor to award the certificate to the persons whom he judges to be elected?—A. Yes, sir.

"Q. The responsibility of the decision is upon the governor?—A. Entirely.

"Q. And it was because, upon the evidence presented, you believed that the governor had decided wrongfully?—A. Yes, sir, according to the returns laid before us.

"Q. You found a true bill against him?—A. Yes, sir.

"Q. And that case is now pending for trial in the United States court?—A. Yes, sir."

Again:

"Q. You heard, of course, nothing but the evidence on the part of the Government; there was no defense?—A. Of course there was no defense.

"Examined by Mr. POOL:

"Q. You sought for no facts as explanatory of the governor's action?—A. No, sir, we knew of nothing; we could get at nothing but the returns.

"Q. Was any witness sworn before the grand jury other than the secretary of state, the—— A. The ex-secretary of state. The present secretary of state was not then in the city. He had but recently entered upon the duties of his office, and his chief clerk was made deputy secretary of state, and he was before us in regard to the records.

"Q. In relation to the authenticity and correctness of the report?—A. Yes, sir. And General Edwards was before us as to the correctness of a copy of the certificate which had been furnished us.

"Q. And you examined no witnesses outside?—A. No, sir."

These witnesses testified more at length before the "joint select committee," &c.; but the foregoing it is believed contains all that is necessary to show the precise charges made. They may be considered under three heads, to wit, certificate to Edwards, election to the Senate, and corrupt bargain.

Without discussing what would be the effect if any or all these charges were sustained, or the propriety or power of this body to consider the same, interesting and important though such a question might be in a proper case, we proceed at once to state our views of the case as submitted to us without reaching the inquiry indicated.

Disregarding, then, chronological order, we shall consider first the matter of the indictment.

It appears that Senator Clayton was indicted for the violation of the twenty-second section of the enforcement act, in fraudulently giving the certificate of election to General Edwards when, as is claimed, it should have been given to his competitor, Judge Boles. He was governor, and as such did give the certificate of election to General Edwards. The language of said section, so far as here material, is that "any officer of any election at which any Representative or Delegate in the Congress of the United States shall be voted for * * * who shall * * * fraudulently make any false certificate of the result of such election in regard to such Representative or Delegate * * * shall be deemed guilty of a crime," &c. By the law of Arkansas it is provided that the secretary of state shall in the presence of the governor, or, &c., cast up and arrange the votes of the several counties, or persons voted for as members of Congress, and that the governor shall immediately thereafter issue his proclamation declaring the person having the highest number of votes to be duly elected, and that he shall grant him a certificate thereof under the seal of the State.

It seems that the secretary of state did thus cast up and arrange the votes in the election between Boles and Edwards. It also appears that by the showing thus made Boles and not Edwards had a majority of the votes, and was hence apparently entitled to the certificate.

This canvass of the votes took place within thirty days after the election (the election being on the 8th of November, 1870), and yet proclamation was not made nor was the certificate issued until in February, 1871.

Immediately after the election divers affidavits and some documentary evidence were presented to the governor, tending to show that in one of the counties (Pulaski) of said Congressional district frauds had intervened which, being considered, would exclude a

large number of votes cast for said Boles and thus elect Edwards. About the same time proceedings were instituted in the supreme court involving the validity of said election, and the votes thus claimed to be fraudulent or irregular, and they were afterward by the judgment of said court determined to be fraudulent and illegal. To state the claim more particularly it was maintained in said affidavit and evidence, as also in said proceedings in court, that the polls in some of the wards of the city of Little Rock (Pulaski County) and some precincts in this county were taken possession of by force, violence, and contrary to law, judges of election installed without right, and other illegalities and irregularities practiced, and notwithstanding the proper and legal judges also held an election at the appointed places, the votes received at the illegal polls and by the judges illegally chosen were the votes received and canvassed. When the legislature met the same questions were there made as to the members of the house and senate voted for in said localities at the same time, and claiming seats under such alleged illegal election, and it was determined adverse to their claims. After all this the governor issued the certificate to Edwards.

It is claimed by those prosecuting the charges here that even excluding the so-called illegal returns Boles was still elected. This we are not prepared to concede, for it seems very clear that there is one method of canvassing the returns, and not at all without warrant in the figures if certain facts are admitted, which would elect Edwards.

This will be seen in the following statement:

By the returns from all the counties, as canvassed by the secretary of state, it appears that Boles received 10,344 votes; Edwards received 8,211 votes. The governor excluded from the count the votes cast in the First and Third wards in the city of Little Rock, and in certain precincts or townships in the county of Pulaski, in all of which the election had been declared illegal by the legislature, of which excluded votes there had been cast for Boles 2,385, which being deducted from the above number, counted for Boles, left him 7,959, and of which excluded votes there had been cast for Edwards 202, which being deducted from the above number counted for him left him 8,009; thus showing a majority for Edwards of 50 votes.

But conceding that Boles was actually elected and hence entitled to the certificate, it would by no means follow that this indictment was well founded, nor that Senator Clayton was consciously and willfully violating his duty or conniving at a violation of the law.

We concede that in strict law the functions of the governor in relation to the proclamation of the result and granting the certificate were ministerial and not judicial. His duty was simply to declare the result and deliver the certificate of his election to the party appearing to have a majority by the canvass thus made. He had no power strictly to go behind the canvass and inquire into the alleged frauds; for the returns were to all appearances legal and formal, and the evidence *aliunde* was for Congress if the question was raised of their illegality, and not for the executive. But it by no means follows that he was guilty of the fraudulent act forbidden by the enforcement act if he did go behind the returns.

In the first place he was not amenable under the statute for this act, because in our opinion he was not an "officer of any election" within the meaning of the statute. This was expressly so held by the circuit court of the United States for the district of Arkansas, his honor Judge Dillon presiding—a jurist of the clearest head, the most incorruptible integrity, and the finest legal attainments—when the question came before him in the indictments, and of its correctness we think there can be no reasonable doubt.

But if such officer, the governor might well in the utmost good faith, though without strict legal warrant, esteem it to be his duty to go behind such returns if it was brought to his attention that fraud had intervened. A mere mistake as to his powers and duties—the exercise of judicial instead of ministerial powers in that connection—would by no means establish the required fraudulent intent. And when we remember the circumstances that such frauds were brought to his attention; that he supported Boles and not Edwards in that election; that he exerted himself to procure the declination of a third candidate (Judge Searles) who claimed to be a regular Republican candidate, and whose candidacy endangered the election of Boles and rendered more probable that of Edwards; that Boles was recognized as the candidate of the party with which the governor has continually acted, and that Edwards was the candidate of the opposition; that at least some evidence was furnished to him of the alleged frauds; that the highest judicial tribunal of the State had declared against the validity of such returns; that the legislature had reached the same conclusion—we say when all these things are remembered we should be compelled to overturn all rules of evidence to say that, while he acted without warrant of law, he also acted fraudulently. A party may mistake the plainest legal duty, and yet have no criminal intent. And so we find in this case that the governor, if an officer of election, did not act fraudulently, hence was not guilty of the

offense charged, and that thus far there is nothing to "impeach his official character or conduct as a member of this body."

Second. Alleged frauds leading to and connected with his election as Senator.

We inquire in the second place into the charge of fraud leading to and connected with his election as Senator.

By reference to the testimony of Whipple (set out above) it will be seen that this is based upon alleged fraudulent registration, and some supposed bargain or arrangement by which Johnson resigned his office as lieutenant-governor, taking the place of White who resigned as secretary of state, Hadley becoming governor and Clayton Senator. Than this few things could be more vaguely stated so far as the testimony of Whipple discloses, and yet this is all, it is believed, to be found therein approximating a charge in this connection. We have sought not to put too narrow a construction upon the language used, nor have we been in the least inclined to limit the investigation within limits even so narrow as the charges here contained under the most liberal construction. And hence, upon the theory of the prosecution, that Senator Clayton, with many others his friends, had conspired by the use of unlawful and corrupt means to secure his election to the Senate, much testimony was received as to appointments to office figuring in and preceding the conventions which nominated candidates for the legislature, the issuing of State bonds to railroad companies, certain influences which it was claimed were brought to bear on members of the legislature looking to his election, and other like matters, though nothing of the kind was charged or pretended in the testimony referred to us.

Of course a most material preliminary inquiry would be to what extent a party thus charged is to be affected by the acts, conduct, admissions, pledges, or promises of his friends, and hence the theory was that there was a conspiracy for the purpose indicated and that what was said or done by one in furtherance of the common purpose was said or done by all, and that upon such hypothesis Governor Clayton was bound by all that was said or done by those engaged in the common design.

As stated in the "partial report," much of the testimony was received upon this theory of the prosecution—it being conceded that if the so-called conspiracy was not established it was in every respect incompetent. Since making that report we have carefully examined the testimony, and feel bound to hold that it falls far short of establishing the alleged combination, and hence that a large portion of the testimony should be excluded. We therefore report only such as we believe to be competent in this view of its scope and effect.

We shall be pardoned for stating the familiar proposition that to constitute a conspiracy there must be a combination of two or more by concerted action to accomplish a criminal or unlawful purpose or to accomplish a purpose not in itself criminal or unlawful by unlawful or criminal means. The conspiracy is the gist of the offense, and it is not necessary that any act should be done in pursuance of such unlawful agreement. To make the acts or declarations of another evidence against the party charged the common design must first be established, and it will not do to connect the party charged or bring him into the alleged conspiracy by the admissions of others without his knowledge or without at least some recognition by him of their right to speak for or bind him.

In this case the purpose to be accomplished was neither criminal nor unlawful. The parties confederated, if at all, to accomplish a proper purpose by the use of unlawful or criminal means. And the whole of the case is, to put it in its strongest light, against Senator Clayton; that he is to be bound by all that was said and done by his friends and simply because they were such, whether at the State capital or elsewhere, in the efforts to secure his election. We do not stop to determine whether these acts were or were not illegal, whether they can or cannot in all respects be defended; we only hold that there is no particle of testimony warranting the conclusion that he ever combined with them to use unlawful or criminal means. And if he is to be held responsible for every indiscreet remark made by overzealous friends, by every inducement just or otherwise held out by them to members of the legislature, for every appliance made use by political and personal friends in the election of the members thereto, for the alleged combinations made in connection with proposed legislation, for all the alleged frauds in connection with registration in some parts of the State near and remote alike—we say, if this be the rule, few men would want friends in such a contest, or would be safe however honest and upright their own conduct.

Many things were said and done by friends of Senator Clayton which we might not approve. Nor would we for a moment recognize any rule which would not exact or require the highest integrity and most honorable conduct in contests of this character. On the contrary, we would condemn without reserve every step, every word, every movement, which would seem to tend to the least fraud or corruption in an election so important. And yet, in view of the duty assigned us, we have nothing to do with mere matters of personal propriety, nor are we to determine whether all the plans, plots, and counterplots of these opposing factions were in all respects to be justified by a code

ethics ever so desirable, and yet perhaps too seldom practiced. We have to do with the practical question whether Senator Clayton was himself a party to such fraud and corruption as invalidate his election or impeach his official character.

In the whole mass of testimony there is but little to connect him with the various schemes which it is alleged were corrupt in their inception and consummation, touching his election. Witnesses, it is true, did testify as to what others said, but that they spoke with the knowledge or concurrence of the party charged is left entirely without proof in many instances, and when the proof is supplied it relates to matters so entirely immaterial or foreign that it is scarcely worthy a moment's attention. One witness (McConnell) undertakes, we know, to bring all the matters detailed by him, or many of them, home to the Senator. But we feel bound to say that in many respects his story is improbable, and he stands before us in such an attitude that we are constrained to discredit much that he says. While before us he was almost a wreck from long-continued dissipation, and we were compelled to put him under treatment for several days before his testimony could be completed. Add to this that several witnesses, having the means of knowledge, testify unhesitatingly that his reputation for truth and veracity is bad, and it seems to us that no tribunal would be justified in condemning any one upon the mere recollection of such a witness, months after the transactions occurred.

That which approximates nearest any improper action on the part of Senator Clayton, in this connection, relates to the steps taken to induce White to resign the office of secretary of state. It will be seen that Clayton was governor and Johnson lieutenant-governor. When the former was first elected to the Senate, Johnson was still lieutenant-governor, and would, if the governor accepted the Senatorial position, succeed to the gubernatorial office. Clayton had pledged his friends, both before and after the meeting of the legislature, that he would not accept the position of Senator if Johnson was to be left as governor. At the time proceedings were pending in the supreme court of the State to oust Johnson, but the proceedings failed, and thereupon Clayton declined the Senatorship. He still desired to be Senator, and yet determined to maintain his pledge to his friends. After much consultation among his friends and others, an arrangement was effected by which White resigned. Johnson was appointed by Clayton to his place as secretary of state, and then Hadley was made presiding officer of the senate, and, upon Clayton's election again to the Senate, which followed soon after the above resignations and appointments, he became governor. Months afterward White received, as we find, through Senator Clayton, $5,000 in money and $25,000 in railroad bonds.

In the resignations and appointment themselves there was nothing wrong. There is no testimony that Clayton made use of improper means to bring them about. White, who is the only witness who seems to know much about it, says that he was a friend of Governor Clayton—was anxious for the harmony of the party—had frequently expressed his readiness to do anything to bring about quiet and peace; that he had for months, because of the condition of his family, expressed his intention to resign; that he had some business relations with the opposing faction, which was in such a situation that he knew he must suffer if by his resignation Johnson could be got out of the way; that he did thus suffer, and that this $5,000 was paid to indemnify him for this loss. He expressly denies that this money or his resignation was any part of any corrupt or other improper agreement or prior arrangement touching the Senatorial election. To this view of the transaction there is no direct opposing testimony. Who furnished the $5,000 and the bonds is not shown, except that they were deposited by Jackson E. Sickels to the credit of White, and the certificates of the deposit were sent to him by Senator Clayton. To conclude that it was paid in pursuance of a corrupt agreement, under and by which Governor Clayton secured his election, we should have to proceed upon presumption in the face of positive statement; and this, too, without any evidence that the vote of any member of the legislature was influenced by it, at least to his advantage; and when, also, it had been demonstrated more than once that he had at the time a clear majority of both houses of the legislature. What he wanted was not votes, for he had them, but he wanted such a condition of things as that he could take the office and keep faith with his friends.

By the retiring of White, Johnson would go to an office more desirable in tenure and emolument than the one he held, which was apparently sufficient to induce the step. The votes of the members of the legislature did not seem to have been involved in the movement, and White was content to see the matter arranged and to retire from a position that had become irksome to him. There was no necessary connection between the arrangement with White and the votes of members of the legislature. In itself there was nothing either criminal or corrupt. Certainly there is no law, State or national, punishing such an act. If not a part of a corrupt agreement, by which votes were obtained, or intended to be secured, we cannot see how the arrangement can be made to affect his official character. Then, too, it must not be forgotten that the conference touching White's resignation was not with Clayton, nor ostensibly on his account, but quite exclusively between Hadley and White, and that Hadley was deeply interested on

his own account in bringing about White's resignation, for, in that event, the chances were, if indeed it was not certain, that he (Hadley) would become governor, and while the money passed through the hands of Clayton, in view of the other interests involved, we cannot say that others may not have contributed it; and, in a matter so important and so vitally affecting the character and official position of a member of this body, we should not indulge in mere presumptions nor upon impression condemn him. Without giving our approval to the course pursued, we find nothing in it of such a corrupt or criminal nature as to vitiate the election, or to warrant a disturbance of his present official position.

But one matter remains to be considered, and that relates to the alleged corrupt bargain by which Senator (then Governor) Clayton issued the certificate of election to General Edwards, in consideration of receiving votes for his present position in the legislature of Arkansas.

This charge, though the one in which this prosecution mainly originated, has less apparent support than either of the others. Much that has been heretofore said is applicable here. The testimony, instead of showing the corrupt bargain, abundantly establishes that the Senator (then governor), though acting from an incorrect view of the law and his duty, nevertheless was carrying out what he had at least fair reasons to believe the will of the people, as expressed by their votes. He had evidence tending to show frauds. He had the solemn judgment of the highest court of his State, and the action of the law-making power touching the very point upon which he seemed to doubt; and he but followed such judgment and action. To say that he acted corruptly or fraudulently under such circumstances, we would have to conclude that not only he had the fraudulent purpose, but that the other co-ordinate departments of the State government were corrupt, or governed by a like fraudulent intent. These charges, as applied to the court and the legislature at least, are too grave to be believed upon this record, or in any case where the evidence is not of the most conclusive and satisfactory character. This conclusion should not be based upon mere presumptions—upon the impression of witnesses—upon the understanding of parties influenced not a little by their political and personal feelings and animosities. And yet, divested of all extraneous matter, this is all there is of this claim.

But, going one step further, the charge certainly fails from the fact that there is not a particle of evidence that any member in either house of the legislature was induced to cast his vote in consideration of giving the certificate to Edwards. The claim is that he was to receive the votes of Democratic members in return for his action; and yet he received but one vote that can by possibility be classed among the Democrats (and even his political status is left doubtful). This person was a witness before us, and he says positively that he voted for Clayton, but that there was no understanding or agreement that in consideration thereof Clayton was to issue the certificate to Edwards. And there is no evidence nor a single circumstance in the whole record in the least in conflict with his statement. There is therefore absolutely nothing in the least supporting this charge.

We are therefore brought to the conclusion, after a careful examination of all the facts, that there is nothing disclosed touching the charges made as found in the testimony of Wheeler and Whipple before the "joint select committee" impeaching the official character and conduct of Senator Clayton. We accordingly recommend the adoption of the following resolution:

Resolved, That the charges made and referred to the select committee for investigation affecting the official character and conduct of the Hon. Powell Clayton are not sustained, and that the committee be discharged from their further consideration.

Respectfully submitted.

GEO. G. WRIGHT.
L. M. MORRILL.

VIEWS OF THE MINORITY.

Mr. Norwood submitted the following as the views of the minority:

As the minority of the committee of three appointed by the Senate to investigate and report upon certain charges made against Senator Clayton, I have been unable to agree with the majority in the conclusions to which they have come, and I therefore beg to submit to the Senate the conclusions to which I have arrived after a careful review of all the facts.

I regret that the majority of the committee did not see fit to lay before the Senate, embodied in their report in abstract form, more of the facts, as it would have enabled me to express my views in much shorter compass. I will, however, embrace none which I do not consider necessary to a correct understanding of the case as made.

The general charge made against Senator Clayton is that he used corrupt means to secure his election to the United States Senate. This general charge embraces several specifications, to wit:

1st. That he corruptly used his executive power as governor of Arkansas in 1870 in

appointing registrars of election to register votes for members of the general assembly, by which he was elected a United States Senator, who as his friends and in his interest would register with a view to elect candidates in favor of him for the Senate.

2d. That when primary meetings were being held in the counties to nominate candidates for that legislature he went about the State and, in person and by his friends and agents, manipulated these nominations in his own interest; and to effect this end used his executive patronage to intimidate candidates opposed to his election to the Senate.

3d. That he either in person or through his friends and supporters for the Senate made a corrupt engagement, express or understood, by which his influence was to be given in favor of the election of General John Edwards, the Democratic candidate for Congress, in consideration of the support to him of Edwards and his supporters for the Senate.

4th. That in pursuance of this understanding he issued to Edwards the certificate of election in the face of a clear majority, according to the official election returns in his (the executive) office, in favor of Judge Boles, the Republican candidate opposing Edwards.

5th. That being under a pledge publicly and privately made to his political friends that he, if elected United States Senator, would not leave the governorship in the hands of Lieutenant-Governor J. M. Johnson, a Conservative, he corruptly instituted through his friends and supporters a proceeding by *quo warranto* to depose Johnson from office in order to clear the way to the Senate.

6th. That being elected Senator while the *quo warranto* was pending, when that was decided in favor of Johnson, he resigned the Senatorship, and afterward secured his reelection by inducing R. J. T. White, secretary of state, in consideration of a large sum of money, to resign and inducing Johnson to take White's place.

7th. That he corruptly procured the votes of many members of the legislature in support of himself for the Senate by paying money; by appointments of themselves and friends to lucrative offices; by granting to them and their friends State aid to railroads in which they and their friends were interested.

Before proceeding to state the testimony bearing upon and sustaining these specifications, I will remark, in order that the Senate may appreciate the extent to which Senator Clayton must have wielded his executive power, the energy he must have displayed, and the means he must have employed to make sure his election, and to increase the probability of the truth of witnesses who detail these means, that his contest for a seat in the Senate extended over a period of two years. This fact he states near the close of his own testimony when endeavoring to explain the statement made by H. L. McConnell, his former private secretary and political supporter, that Clayton told him the day after the second election "the fight had cost him (C.) in the neighborhood of $20,000." His extreme desire to be a Senator likewise throws much light on many acts whose full force might not otherwise be realized. In a conversation held by Clayton, Lieutenant-Governor Johnson, Thomas M. Bowen, Joseph Brooks, and J. L Hodges, a short time before Clayton's second election, Brooks and Hodges both testify that Clayton stated he had long earnestly desired to be a Senator; that it was the dream of his life; that he was as ambitious as Cæsar; and that had he his way he would sway the scepter of universal empire.

I would further state that by the laws of Arkansas under her new constitution the governor is clothed with unusual power and patronage. It is sufficient in this connection to say that, with all the other power and patronage incident to the executive of each State, he has the power of appointing judges, sheriffs, and justices of the peace. We will have frequent occasion to remark with what vigor, if not rigor, such power, energized by such desire and ambition, was brought to bear in his Senatorial contest on friend and foe.

The contest was exclusively Republican. Clayton had two opposing aspirants, McDonald, former United States Senator, and a negro named White, both Republican. The legislative, executive, and judicial officers were all Republican. There was no hope for a Democrat to succeed. Of eighty-one members of the house in 1871 fifty-eight were Republicans and twenty-three Democrats, as stated by Tankersly, the speaker. The oppressive disqualification of votes excluded a sufficient number of Democrats from the polls to throw the power (except in a few counties) into the hands of the Republican party. And such was and is the extraordinary power confided to registrars of election to receive or reject a voter's name—and to the board of review to retain or erase the names of voters registered—that the control of a governor over an election by appointing his friends and supporters on those two boards was only limited by his own integrity and that of his appointees.

In this contest the Republican party, being overwhelmingly strong, split by its very weight into two factions. They came to be known respectively by the names of "Brindletails" and "Minstrels." Either claimed to be the elect. Governor Clayton led the lat-

ter while Joseph Brooks was the acknowledged head of the former. The hosility fel toward each other was very bitter. Around either leader were gathered many arden defenders. And as exemplars of the characters who were from first to last the warm and confidential friends of Governor Clayton I beg to give what the evidence shows t be the *morale* of the most prominent of those whose acts and sayings during the Sena torial struggle are very important in determining the charges made against Senator Clay ton. For from their confidential relations to him, from their constant conference witl him during and before and after the session of the legislature which elected him, fron their interest in his success and dependence on him for office and other favors, we ar enabled to decide to what extent their acts and sayings were the acts and sayings o Governor Clayton. We learn also with what kind of men Governor Clayton used t accomplish his purposes. His chief adviser and constant attendant was Thomas M Bowen. There is scarcely a witness who testifies to an interview with Governor Clayto during that contest, extending through two and a half months, who does not speak o Bowen being present. He attended all the caucuses of Clayton's friends, was a regula lobbyist during the session for Governor Clayton, was most of his time in the execu tive office, and was present at several long, protracted interviews held at night betwee Governor Clayton and others of the opposition whom Governor C. was endeavoring t appease. Judge Bowen's motto, as testified to by Brooks and Hodges and undenied, was "politics is but a game," and that the admission of non-admission of a contestant fo his seat in the legislature is a mere question of party policy. This declaration of polit ical ethics will be seen bearing its fruit in the subsequent conduct of its author.

Another adviser and confidential friend was John McClure, chief-justice of the su preme court, the appointee of Governor Clayton. The testimony shows that he wa frequently with Governor Clayton during his contest; that he was editor of a partisa gazette in Little Rock, advocating Governor Clayton's election to the Senate while occu pying the supreme bench; that as such editor he accepted a large sum of money from th friends of a bill to silence his opposition to the bill; and that he during that time en gaged, or offered to engage for a large sum, to lobby a bill through the legislature These facts, except the last, he establishes by his own testimony in this investigation A third warm and zealous co-worker for Governor Clayton's election was Judge Ben nett, also of the supreme court of Arkansas, and appointed by Governor Clayton. Th testimony of W. R. Rogers throws much interesting light on his character. He was hotel-keeper in Illinois, failed, joined the Federal Army, went to Arkansas as a captain resigned, and read law; was appointed about a month after his admission to the bar b Governor Clayton as circuit-court judge, and was soon after (during the session of th legislature) appointed by Governor Clayton to the supreme bench. His influence wi Governor Clayton was supposed (says Rogers) to be greater than that of any man in t State, and hence during that session of the legislature, while Bennett was on the supre bench, he accepted from Rogers and others interested in a large railroad bill a propositi to use his influence with the board of railroad commissioners (composed of Governor Cla ton, White, secretary of state, and one Thomas) to procure a grant of State aid to t road, and charged $70,000 ($1,000 per mile) for his influential service. His influence w effective. The aid was granted, the bonds were issued, and Bennett received from M Dorsey (interested with Rogers) $35,000. During the Senatorial contest he was ve often in Governor Clayton's office and on the floor of the house.

Another scarcely less conspicuous character and equally zealous supporter of Go ernor Clayton for the Senate was Charles W. Tankersly. He is a Virginian; joined t Confederate army; deserted; joined the Federal Army; "misappropriated public pro erty" (a horse); was dismissed the service, and retired to private life in Philadelphi till the war closed. He then went to Arkansas; enlisted under Governor Clayton i his contest for the Senate; was elected a member of the legislature; was nominated b Clayton's friends for speaker and elected. McLane swears that Tankersly told hi Governor Clayton sent for him (T.) before the legislature assembled and requested hi to run for speaker. It will be seen that in this contest he was not a deserter, but was tru to his colors, and received, after Clayton's election, his reward in his appointment a superintendent of the penitentiary.

Another and very prominent actor in these scenes, and a devoted friend of Governor Clayton, was O. A. Hadley. He was a senator in that general assembly. He was General Clayton's agent to make the offer to R. J. T. White to pay him a large sum of money to vacate his office, and thus remove an insurmountable obstacle to Clayton's election to the Senate, as I shall show hereafter. That being accomplished, Hadley was elected president of the senate (*vice* J. M. Johnson, who took White's place), and while governor he continued to preside over the senate until certain bills (such as the levee and others) were passed. As this dual service as president of the senate and governor was contemporaneous, and the first office was resigned just after these immense money bills were passed, it may not be amiss to state that the witness McLane swears that Chancy

Stoddard, who paid McLane a large sum ($5,000) in bonds to silence his newspaper and to get his services as a lobbyist for the levee bill, and who, by his own testimony, stands convicted of bribing other members of the legislature to vote for the levee bill, told him (McLane) that he (Stoddard) paid Hadley $20,000 in bonds for signing the levee bill. This Hadley denies, while Stoddard says he does not know the name of but one member, named Prigmore, who got the bonds, though he had reason for knowing that others shared them. As, however, the fact is not denied by any witness, not even by Clayton or Hadley, that Hadley bought off White, it is not much of a strain on even human charity to believe that a man in the market to buy will not arouse a sleeping conscience to stand guard against his being bought.

There are other actors in this drama whose moral figures would not compare unfavorably with those already but partially delineated; but as I have sketched the chiefs, I leave the others to speak for themselves through their own and the mouths of other witnesses, and will now proceed to a summary statement of the facts. And in doing so, as a matter of convenience, and to economize time and space, after once introducing a party or witness by his full name, I will employ only his surname

I will take the specifications in the order in which I have arranged them, and while I treat each separately for the purpose of grouping like facts, that they may be seen at one view, as will be seen hereafter, I resolve the seven specifications into three charges, all and each of which I think the testimony and evidence sustain.

And, first, as to the corrupt appointment and use of registrars. It is not unreasonable to assume that Governor Clayton after the canvass of over a year, according to his own statements, prior to the summer of 1870 (for in March, 1871, he stated that it had extended for two years), with his ambition to be a Senator, selected his own friends to register the electors of the general assembly, and of officers to be elected in November, 1870. This assumption is borne out by the testimony.

In the county of Pulaski he appointed James V. Fitch and E. H. Chamberlain registrars. There is much evidence *pro* and *con* as to the fraudulent registration made by that board, and without stopping to settle the point of veracity, it is sufficient to say that without any prior announcement of his intention, Chamberlain, who was one of the most zealous of the partisans of Clayton, and worked from first to last for his election, and who was introduced as Clayton's witness in this investigation, just after registration closed, and within five days of election, on the 8th of November, announced himself as a candidate on the Clayton ticket for the legislature; and while by the returns, as set forth in the testimony of the witness J. L. Hodges, he (Chamberlain) received but 1,892 votes from the counties of Pulaski and White, constituting his district, out of a vote of about 5,000, he was returned by the secretary of state to the lower house as one of the members-elect, and obtained his seat. And from that time to the end of the disgraceful struggle, carried on in and out of the legislature for near two and a half months, for the election of United States Senator, he was not only the supporter but the confidential agent and adviser of Governor Clayton. James V. Fitch was rewarded by an executive appointment to the office of circuit clerk of Pulaski County and clerk of the crimimal court, which court was created at that session of the legislature.

The witness A. A. C. Rogers says that in Columbia County Clayton appointed a boy from Illinois, named Ryan, registrar, and that in Hot Springs County he appointed Z. L. Cotton as registrar, who, it was generally understood, lived in the county above and out of the district, though by the law of Arkansas the governor is required to appoint a resident of the county, who has resided in the county six months before the registration.

The witness Met. L. Jones states that Clayton appointed a man named George A. Wilkins registrar in Columbia County, and that Wilkins was afterwards appointed justice of the peace. A justice of the peace in Arkansas has jurisdiction up to $500, and the fees of office are high. That W. H. Atkins, registrar for Union County, was also afterwards apppointed a justice of the peace.

The witness Jones states that Cotton was a resident of Mount Ida, Montgomery County, while acting as registrar in Hot Springs County, and was afterward appointed clerk of the Montgomery County court.

As evidence of the sympathy existing between these registrars and Governor Clayton, I refer to an interview detailed by the witness Met. L. Jones, between himself, Governor Clayton, and Judge Bearden. He says such were the frauds being committed by the registrars in Columbia and Union Counties, that many citizens of those two counties met in convention and appointed Jones and Bearden a committee to wait upon the governor and make complaint and petition for redress. He stated the case; told Governor Clayton that he had affidavits of fifteen substantial men in his county to the facts. Governor Clayton said, at first, that was *ex parte*. Witness offered to put them in proper form. Governor Clayton then said it was too late to investigate (though the witness states the interview was fifteen days before the election, and the law of Arkansas is that

registration closes only ten days before the election). Jones then asked him to remove the registrar. Clayton replied he did not have the power; to which Jones rejoined he had already removed some. Clayton said he had, but that he thought he had transcended his authority, and that he would refer the matter to the courts. When asked if he would not interfere then, he said he would after the election. Jones said then he would apply to the courts, and Clayton told him he would not submit to that interference by the courts before the election; and if he (Jones) attempted to arrest the registrars before the election, he would treat the act as insurrectionary, and would employ force, i necessary. Met. L. Jones was an intelligent man and a lawyer.

In this connection I will give the first and second sections of the act of July 15. 1868, regulating registration of electors in Arkansas, page 52, statutes of 1868, and will state that there is nothing further in the whole act, or any other law of Arkansas, brought to the notice of the committee, which abridges the power therein conferred on the governor.

"SECTION 1. That on or before the 1st day of August, 1868, and every two years thereafter, the governor shall, with the advice and consent of the senate, appoint three loyal, competent, and discreet citizens in each county, who shall have resided at least six months in the county next preceding their appointment. Said persons shall be styled and called board of registration, one of whom shall be designated by the governor as president of said board: *Provided*, That in case no such person can be found in each county within the State, then and in that case they shall be appointed from the county most convenient thereto, each of whom shall serve two years, unless removed as provided hereinafter: *And provided further*, That the governor, in lieu of one of the citizens to be appointed as above provided for in this section, may designate a justice of the peace, notary public, or constable as one of the members of the board of registration, who shall in every such case be designated as the president of said board; and every justice of the peace, notary public, or constable that may be designated by the governor as a member of said board for any county in this State shall, in addition to the duties now imposed upon him by law, discharge the duties of president of such board of registration according to the provisions of this act.

"SEC. 2. The governor shall fill any vacancy occurring in any of the appointments made by him, and may in his discretion remove any one so appointed by him for incompetency or other sufficient cause. The secretary of state shall cause notice by certificate to be given to each of the persons, and shall also transmit to the clerk of the county court of each county the names of the persons so appointed as board of registration."

With this act before him, and the fact brought to his notice that he had already removed some of the registrars, he stated to Jones as a reason for not desiring to interfere with that alleged fraudulent registration in Columbia and Union Counties that he did not have the power to remove them. His first answer was it was too late; second, I have not the power; third, go to the courts for redress; and, fourth, you shall not resort to the courts until after the election, and if you do I will consider you an insurrectionist and put you down with a military force.

To show the discretion and power of these registrars, as well as to illustrate the beneficence of the then existing government in Arkansas, and the freedom of opinion thereby tolerated at that time and now, so far as I am advised, I will quote the eleventh section of the act above referred to:

"SEC. 11. That no person shall be registered who during the late rebellion took the oath of allegiance to the United States, or gave bond of loyalty or for good behavior, unless he shall show by satisfactory evidence that he has ever kept this said oath or bond inviolate, or that he has openly advocated or voted for the reconstruction measures of Congress, or voted for the constitution at the civil polls at the constitutional election of 1868."

I will remark this act was passed during Governor Clayton's term of office and was of course approved by him. Referring to the words in the last section quoted and italicized by me, I challenge all Christendom to produce its parallel for anti-republicanism and tyranny.

It is very easy to see how, with such harsh and at the same time mobile power lodged in the discretion of the instruments and favorites of a governor acting in the capacity of registrars, they could manipulate the election of a legislature to secure an overwhelming majority.

As evidence as to how Governor Clayton was disposed to use that power I refer to the statements of the witness A. A. C. Rogers. Rogers was a candidate for Congress against O. P. Snyder at that election. In August, 1870, before Rogers entered the race, knowing, as he says, how registration had been conducted in the former election for Congress in 1868, he called upon Governor Clayton to know if the people of Arkansas would have a fair election. He says Clayton smiled and said that depended very much on circumstances. What those circumstances were will appear hereafter. Rogers states that

about two weeks before the election he complained to Governor Clayton of the abuses in registration in his district, told him that out of about 2,200 voters in Union County there had been registered but about 700 to 800, and that in Chicot County they were registering about 1,200 railroad hands, non-residents, who were there employed by one Jackson E. Sickles, a railroad contractor. Rogers states, as does Sickles also, that Sickles was a personal and political friend of Governor Clayton and desired him to be Senator. Governor Clayton said to me, "I have no control over my registrars and I cannot do anything with it." Rogers replied, "Governor Clayton, you have attempted to control; in two or three instances you have removed registrars and appointed others, and now you tell me you cannot do it." To which Clayton replied, "Damn it, I do not know but what I did wrong, but the damned rebels there ought not to vote anyhow." Rogers replied, "Governor Clayton, you are not the constitution of the State. It is your business to enforce the law if it dooms every man in the State, and when you assume to be the constitution you assume too much." Rogers called his attention to two hundred sworn certificates of persons debarred the right to register. Clayton replied, "I have not time to correct it now." Rogers says this was about nineteen days before the election. Much more was said with which I will not encumber my remarks, but which illustrates the manner in which Governor Clayton conducted that registration. Governor Clayton admits the conversation and does not deny the language, but explains by saying that he referred to Ku-Klux outrages existing at the former election, in 1868, and that he said to Rogers that if they were to be repeated he would control the registration to prevent them, or words to that effect. The Senate will be enabled to judge between the two statements when this conversation is given more in detail. Rogers states that Clayton removed Judge Alexander, in Ouchita County, after registration was complete, and appointed a man named Thompson registrar, who lost the registration book and ran away; that he removed Hicks, a registrar in Hempstead County, and appointed Beldin, the uncle or father of D. P. Beldin, senator from Hot Springs County, who was one of Clayton's strongest friends during his Senatorial contest.

The second specification is as to how the nominations for members of the legislature were manipulated by Governor Clayton and his friends in his own interest. On this point I will be brief, contenting myself with one transaction by way of illustration. The witness Judge Story testifies that he was a candidate for the legislature from Columbia County; that a man named Archer, a supporter of Clayton, came into the county and said that Governor Clayton did not desire him to go to the legislature and asked him if he intended to persist in his candidacy; he replied that he did. Archer then produced from his pocket an order or proclamation issued by Governor Clayton and threatened Story that if he did not desist and allow Clayton's friends to be elected that the public printing, which Story, a Republican, was then doing in the Magnolia Flower (a gazette of which he was editor), would be taken from him and given to another paper. He was then doing the public printing for two counties, Union and Columbia. The public printing was afterward given to the South Arkansas Journal, printed at Camden, Ouachita County, forty miles off, not more than fifteen copies of which the witness states were taken in his county This patronage consisted of publication of notices from the probate courts, executors' and administrators' sales, &c., and for the two counties was worth to Story $3,000 per year. This printing was taken away after the delegation from that county reached the legislature and persistently opposed the election of Governor Clayton. The witness asked Governor Clayton why it was done. He gave no reason, but referred to the course the delegation had taken toward him. Several other witnesses besides Story also testified that while the primary meetings were being held for nominations throughout the State, Clayton was going about the State providing for the nomination of men favorable to his election. The witness J. T. White testifies that after the nomination was made in his county, Clayton appeared there and insisted upon a renomination, which was carried out and the ticket elected. The witness, who was nominated the first time, was retained on the ticket as a friend of Governor Clayton.

The third and fourth specification charges a corrupt agreement with the Democrats, and particularly with General John Edwards, Democratic candidate for Congress, in pursuance of which the Democrats were to support Governor Clayton for the Senate, and Governor Clayton was to aid in the election of Edwards, and to give him the certificate of election. The inception of this transaction occurred in October, 1869, as testified by the witness A. A. C. Rogers. He says that at a meeting of the most prominent Democrats in Little Rock, assembled to consider the political situation of the State, Judge T. M. Bowen appeared with a written proposition from Governor Clayton to form a combination with the Democrats for their support. He said he was right from Governor Clayton, who approved it, and that he was there in Clayton's interest. His proposition was that Governor Clayton would control the election so as to secure a legislature favorable for him for the Senate, and that Clayton, in consideration of the Democratic support, would recommend to the legislature such measures as would relieve the people from the

disfranchisements of the constitution; that in the counties where Clayton's friends had the majority he was to name the candidates; in the counties where the Democrats were so greatly in the majority that he could not control them, they were to name the candidates. There was no Republican present except Judge Bowen. Bowen said that the witness (Rogers) was to acquiesce in this arrangement. Another meeting was held at Mr. Garland's office that night, and a consultation ensued. Rogers dissented to Clayton's proposition, and withdrew from the meeting. Witness met Governor Clayton the next day at the fair grounds. Clayton referred to the meeting the night before; said that the arrangement proposed was "about the best thing that could be done." Bowen stated distinctly, in answer to an inquiry propounded by A. H. Garland, one of the Democrats present, that this proposition and the terms upon which it was made came directly from Governor Clayton. The proposition shows very clearly two things: first, his anxiety to combine with the Democrats for his election, and, secondly, that he was perfectly willing to use the executive power in manipulating the election of members of the legislature to the same end. It also reflects much light upon the two charges made against him, that he did conduct the registration for that election unlawfully, and, therefore, corruptly, if to secure his election; and that he agreed to issue the certificate of election to Edwards, in consideration of the support of Democrats.

As Governor Clayton required that the witness Rogers should accede to this proposition, and as he dissented, there is no evidence before the committee that the combination then proposed was ever carried out in that form; that is to say, there is no evidence that the Democrats allowed him to name their candidates. But as to whether his purpose was carried out as revealed in that proposition will be seen when we come to consider his conduct and motives in issuing the certificate to General Edwards.

There are other similar facts disclosed in the evidence, but I will now proceed to collate the facts bearing upon the charge of issuing the certificate of election to General Edwards.

There were two Republican conventions held at Fort Smith to nominate candidates for Congress. Judge Thomas Boles was nominated as the regular Republican candidate; E. J. Searle was nominated by the other. Edwards states that he ran as an independent candidate—a quasi-Republican—but supported by the Democrats and Conservatives. In a short time Searle withdrew, leaving Boles and Edwards to run the race. The majority of this committee, in their report, assume as an uncontroverted fact that Governor Clayton supported Boles, the regular Republican; but there is hardly any fact in the whole investigation about which witnesses differed more, as I will now proceed to show, and if the evidence does not establish the fact that Clayton was supporting Edwards, it undoubtedly shows that if supporting Boles, Edwards was the subject of much well-plied coquetry; for Edwards and his friends were certainly under the impression that Edwards had the executive favor. The witness H. L. McConnell swears in terms that Governor Clayton supported Edwards. And just here, as an attempt was made, in consequence of the strength of McConnell's testimony against Clayton on this and other points, to impeach his veracity, and as a majority of the committee in arriving at their conclusion have entirely ignored his testimony, I will state the reasons why I give credence to his statements. He went to Little Rock in 1869, with a letter of introduction to Governor Clayton, going from Leavenworth, Kans., where Governor Clayton formerly resided. Being an editor, and evidently a very intelligent man, he was engaged by Governor Clayton as his private secretary. He commenced advocating, in a public gazette, Governor Clayton's election to the Senate, and continued in both capacities until Governor Clayton's election. These facts are not denied by Clayton himself. They were certainly on the most intimate terms. Sustaining those relations to Governor Clayton for two years, he certainly had full opportunity to ascertain during that time whether McConnell was a man of veracity; for let it be borne in mind that his testimony is not discredited by contradiction, but, on the other hand, is corroborated in many points by several witnesses. The attempt to discredit him was made by introducing two or three parties, unknown to the committee, who swear that McConnell's reputation while in Leavenworth, and afterward in Little Rock, for veracity was bad. That he was the holder of the political secrets of Governor Clayton is fully sustained by Clayton's own testimony, for, some time after the Senatorial election, and in 1871, two witnesses, Mr. and Mrs. Parish, whose voluntary affidavits were admitted in evidence by consent, swear that Governor Clayton during McConnell's absence from his room, which was in Parish's dwelling, entered McConnell's room, opened his trunk, ransacked it, and examined a large number of letters therein, and took away a large bundle of papers. The witness says they were letters which show Governor Clayton's relations to Edwards. Clayton says they were letters which he had given to McConnell to answer, and which McConnell had not answered. McConnell, who says that he occasionally—two or three times a year—gets on a drunken spree, was at that time drunk, and had been absent from his room for a day or two. Their relations were certainly extremely confidential, not only

from the testimony of other witnesses, but from the admissions of Governor Clayton himself; besides as to several material statements Governor Clayton corroborates the testimony of McConnell. As, for instance, McConnell testifies that Clayton offered Grady, a member of the legislature, the sheriffalty of his (Crawford) county to vote to impeach Lieutenant-Governor Johnson, and about that Clayton says he has an indistinct recollection of McConnell's speaking to him about the sheriff's office of the county, but does not remember that he made any promise or pledge.

Again, McConnell says that Clayton told him his election had cost him $20,000. Clayton admits he told him that it cost him a great deal of money, and explains in what way he spent it; and it is most noteworthy in determining the credence to be given to McConnell, that Governor Clayton, while testifying in his own behalf, and being represented by two counsel supposed to be learned in the law, and to understand how to conduct a defense, to wit, John McClure, chief-justice of the supreme court of Arkansas, and Thomas M. Bowen, ex-justice of the same bench (McClure appointed by Clayton, no doubt on account of his judicial learning), did not in all of his testimony refer, by denial, to any of McConnell's statements, which are numerous and very damaging if true, except the two instances that I have referred to above.

And now to resume the evidence bearing upon Edwards's case.

McConnell, who by editorials and correspondence was advocating Clayton's election, and was on such terms of intimacy with Clayton, publicly and privately opposed Boles and advocated Edwards's election. He produced five letters written to him by Edwards during the campaign, the first dated as early as the 19th of January, 1870, in which he says, "We are bound to sweep the State and elect Clayton to the Senate; most of the Democrats will vote for us. I am glad you are with us for Clayton." The second, dated November 25, 1870, says: "If we can succeed in getting the returns of the legal polls sent up, I am satisfied the governor will disregard the bogus returns and give me the certificate." In another letter, written before Clayton's first election, Edwards says: "I have succeeded admirably in squelching out several contests in other counties, urged on by the 'Brindle-tails' in order to compromise the contest from Pulaski." * * * "If Clayton should count the five townships and give Boles the certificate, a howl would be raised by Conservatives and Republicans, that would let in Brooks and Hodges (two Republican candidates for the legislature, who were contesting for their seats, and opposed to Clayton, one of them, Brooks, a very influential man), and keep out the others who had publicly pledged to his support." The fourth letter says: "Clayton has the inside track; can be elected, and above all will receive the support of all the Conservatives, but if he should fail to give me the certificate, such a howl as will go up you never did hear." In the fifth letter, dated February 12, 1871, and which was written after Clayton's first election (January, 1871), and before Edwards got his certificate (February 20, 1871), Edwards says: "From the vote ousting the great high priest, Joe (meaning Joseph Brooks, the senator, who had been turned out of the senate by Clayton's supporters), I shall be under more obligations to the governor for the certificate than any one else, and I think I can, in turn, render him essential service, as they intend making war on him on his taking his seat." I call attention to the letter dated November 25, 1870, in order to state in this connection that Edwards swears that he went from Fort Smith, his home, to Little Rock, within ten or fifteen days after the election, which was held on the 8th of November, to see Governor Clayton about his certificate; that Clayton then and there said that he (Clayton) would be governed in issuing the certificate by the action of the courts and legislature. This statement shows that Clayton already had the returns before him, and knew the result of the returns. Boles swears that he first called on Governor Clayton to see about the certificate, after the expiration of thirty days from the election, which must have been after the 8th of December, and that Clayton then told him that he had not examined the returns because he had not been well; that Clayton said nothing about the result of the election as shown by the returns, but said that Boles might go to Washington; he (Clayton) guessed the certificate would be all right.

Boles testifies that he was the regular Republican nominee for Congress; that Searle was the nominee of the other faction; that Clayton considered him (Boles) opposed to Clayton's election to the Senate.

Edwards, witness for Clayton, testifies that he was an independent Republican candidate; that Clayton favored Boles's election; that he (Edwards) was in favor of Clayton for the Senate.

The returns, it is admitted on both sides, in the executive office showed that Boles was elected over Edwards by a large majority; but Clayton refused to give the certificate to Boles. The law of Arkansas requiring the governor to issue the certificate is as follows:

"It shall be the duty of the secretary of state, in the presence of the governor, within thirty days after the time herein allowed to make returns of elections to the clerks of the county courts (*i. e.*, five days after the election), or sooner if all the returns shall have been received, to cast up and arrange the votes from the several counties, or such of

them as have made returns for such persons voted for as members of Congress, and the governor shall immediately thereafter issue his proclamation declaring the persons having the highest number of votes to be duly elected to represent the State in the House of Representatives of the Congress of the United States, and shall grant a certificate thereof under the seal of the State to the person so elected."—(Statutes of Arkansas, 1868, page 325, section 50.)

Governor Clayton refused to issue his proclamation declaring Boles elected, and never did issue to him the certificate of election. His only excuse for refusing to comply with the law above quoted is that a few days after the election certified copies of affidavits, accompanied by a petition purporting to be signed by several candidates for the legislature in Pulaski County, asking him not to count the returns from that county, on account of alleged frauds, were laid before him. These certified copies are signed by Stoddard (brother of Chauncey Stoddard, who bribed Prigmore) and other members of the legislature. When Clayton was on the stand he could not recognize the handwriting of but two of these petitioners, though he knew them all well, and these two are Howard (a Democrat) and Chamberlain (a Conservative, who was his political friend and voted for him for Senator). Why certified copies of affidavits were used no witness explains. Why only the signatures of Howard and Chamberlain are proved (and that by Clayton only) to be genuine the committee were not informed. But here comes in an extraordinary fact which may be, and in my opinion is, the key to the mystery. No one ever saw those affidavits and petition until this investigation commenced, though Clayton says he received them the 17th of November, 1870, so far as the testimony shows, except Clayton and Chamberlain. R. J. T. White, secretary of state, swears he never saw them. Barton, Clayton's private secretary and brother-in-law, and his witness, makes no reference to the existence of these affidavits and the petition. And when Clayton was asked how these papers came to be in his possession now, his significant reply was that when he vacated the executive chair he retained them, "deeming they would probably be of some importance in the future." Boles also swears that in his interview with Clayton, thirty days after the election (about 8th December), when Clayton told him to "go on to Washington; he [Clayton] guessed the certificate would be all right," Clayton did not even refer to the existence of these affidavits and this petition.

Another part of this history necessary to be known is this: Chamberlain and Howard were beaten by the returns first made from Pulaski County. The clerk of the county, McDiarmid, had received two sets of poll-lists; had rejected one and certified the other and sent it to the secretary of state. The one certified defeated Edwards and elected Boles—defeated Chamberlain, Howard, Gantt, Mitchell, and others, and elected J. L. Hodges and others.

It was all-important, therefore, in order to justify issuing the certificate to Edwards, that the rejected polls in Pulaski should be counted, and the polls certified to the secretary of state should be rejected. When Edwards called on Governor Clayton, about ten or fifteen days after the election, they and Chamberlain held a conference, and it was then and there agreed that steps should be taken to get the returns excluded by McDiarmid sent up. Chamberlain sued out from the supreme court, then consisting of McClure, Bowen, and Wilshire (another adherent and appointee of Clayton), a mandamus to this clerk. A case was made and the court decided that the excluded polls were the legal votes. But still the certificate was not issued, though this decision was rendered two days before the legislature met. The election for Senator was yet to take place, and the support of Edwards and the Democrats was to be given. The election occurred on the 11th of January, 1871, and all the Democrats except five voted for Clayton. He accepted the position as Senator and still would not issue the certificate. Two of the candidates for the house in Pulaski County, Gantt and Mitchell, had proposed to Clayton, Edwards, and their friends that they must desist from this contest for seats if Clayton would issue the certificate to Edwards. When Clayton was elected on January 11, as above stated, Gantt (who was authorized by Mitchell to act for him) complained because Edwards was not commissioned. On January 27 Gantt addressed the following letter to the house:

To the honorable the house of representatives of the State of Arkansas:

I learn from the published proceedings of the house of representatives in the city papers of this date that it was announced in your honorable body on yesterday that I had retired from any contest for a seat therein, and that the protest and papers presented on the first day of your session by Hon. L. B. Mitchell and myself to abandon our contest on condition that a certificate of election as member of Congress was issued to General John Edwards. I certainly understood this to be fully assented to, and in compliance with that agreement prepared a formal abandonment of the contest, in writing, to be used only after such certificate should have been issued to General Edwards.

Believing that General Edwards had been legally elected a member of Congress, and

that he could render efficient service in that capacity, but fearing that the issuance of his certificate of election was likely to be delayed, if issued at all, and desiring that it should be issued, we consented to surrender our individual rights in the premises for what we considered to be the public good.

Hon. L. B. Mitchell and I are able to show, by the most indubitable evidence, that we were legally elected representatives from the tenth district, and respectfully ask that we be afforded an opportunity of doing so; that the papers connected with our contest be rereferred to the committee on elections, and that we may have a fair and impartial hearing.

R. S. GANTT.

Before the date of Gantt's letter the court had decided that the excluded polls were the legal votes in Pulaski County, which gave Edwards a majority of 50, and the legislature, by joint committee, had decided the same question in the same way. This result, let it be remembered, was all Clayton said he desired to decide to whom he would issue the certificate. Hence Gantt complained, because the agreement had been carried out by him and the other Democrats and Clayton had not issued the certificate to Edwards.

I will now state some facts which furnish an explanation of this delay or refusal. The fact is sworn to by many witnesses on both sides; indeed, it is admitted by Clayton that during the canvass for the election for the legislature and Congressmen he pledged himself to his political friends that he would not if elected Senator accept the position and leave Lieutenant-Governor Johnson in office to become governor. This pledge was on him at his first election in January. He, as is alleged, had a proceeding *quo warranto* instituted against Johnson to turn him out of office on the sole ground that Johnson, who was elected with Clayton in the spring of 1868, and had been in office for over two years, and presiding over the senate by virtue of his office, had not taken the oath of office as lieutenant-governor within the time prescribed by law. This was more than even the supreme court of Arkansas, constituted, as I have shown it was, could stand. The *quo warranto* failed, and Clayton kept his pledge by resigning the Senatorship.

The Democrats and Conservatives then became furious. Gantt sent in his letter to the house. Articles of impeachment were preferred against Clayton in the house, and fourteen of the friends of Clayton, to prevent their presentation to the senate, deserted the senate and "took to the brush." The certificate was issued to Edwards, and Gantt and Mitchell gave up the contest for their seats. From this time to the date of Clayton's second election, on the 15th March, 1871, two other means were adopted to secure his election. They constitute the foundation on which the sixth and seventh specifications rest.

I will now proceed with the evidence bearing on the Clayton-Edwards agreement.

Boles testifies that Clayton was unfriendly to his nomination; that during the canvass Clayton asked for his support for the Senate, and he told Clayton that he must stand neutral between him and McDonald.

Edwards, witness for Clayton, as has already been shown by his letters to McConnell, was supporting Clayton. He says in substance, "Clayton, Chamberlain, and I agreed on the investigation which was to change the result in Pulaski County by which I would get a majority. Chamberlain agreed to take the matter in hand. Chamberlain may have told me that he was moving in the investigation at the instance of Governor Clayton. Clayton and I agreed on the matter as any two would agree to any proposition. I always saw Clayton privately. Chamberlain told me that he had talked with Clayton and that Clayton desired the investigation to go on—just such an investigation as afterward took place. [Investigation here referred to was the one afterward conducted by a joint committee of both houses, Samuel Mallory, senator, chairman, for the double purpose—first, to furnish a ground for issuing a certificate to Edwards, and, secondly, to exclude certain candidates from Pulaski and other counties who were opposed to Clayton's election, and who by the returns then in the executive office were elected.] Chamberlain always said he desired Clayton's election. I left home on my way to Washington about the 23d of February; was informed by letter before leaving home that I would get my certificate. [Certificate was issued the 20th February.] I heard a rumor of this bargain between Clayton and myself before the certificate was issued; denied it privately but not publicly. Gantt told me that if the investigation (by Mallory committee) was made I would go to Congress and he and Mitchell would in that case withdraw from their contest. The polls which McDiarmid, the clerk of Pulaski County, had excluded were counted by the Mallory committee, and those he returned were rejected; this gave me 50 majority. The Mallory committee reported after Clayton's first election. No one ever approached me on the subject of a bargain further than as to the withdrawal of Gantt and Mitchell. I probably wrote letters urging Clayton's election. My first interview with Governor Clayton about my certificate was ten or fifteen days after the election. He said in that interview he would be governed by the action of the courts

and the legislature. Democrats and Clayton Republicans told me the same thing. Both Clayton and White, secretary of state, told me the election returns were late coming in."

McConnell says: "Governor Clayton supported Edwards in the election. He told me he would issue the certificate to Edwards. Neal, Democrat, told me that there were great complaints among the Democrats that Clayton had not given the certificate to Edwards. I told Clayton of the complaint; there was at that time a coalition between the Democrats and Brindle-tails to unseat Clayton men in the legislature. I told him Whitesides, elected sheriff of Crawford County, had not received his commission, and suggested that he commission Whitesides to conciliate the Democrats. Clayton assented, and informed me that he would issue the certificate to Edwards. He said, however, that commissioning Whitesides would raise a howl among the ultra-Republicans. I saw Gantt on the morning of Clayton's second election; told him Clayton had fulfilled his pledge by issuing the certificate to Edwards and that he (Gantt) ought to do something for him; Gantt said he would go out and do what he could. Judge Walker, of Washington County, sent word by Edwards to Clayton that if he treated Edwards right Walker would urge his representatives, Owen and Caraloff and others, to vote for him.

"While the impeachment was pending against Clayton, Edwards told me he could not do much to relieve him unless he (Edwards) got his certificate, and asked me to tell Clayton that Edwards says that Clayton had promised to give him the certificate and was only waiting for a report from the Mallory committee; that the report had been made and the decision of the court in the mandamus case rendered, and that he wanted his certificate. I told Clayton, and the certificate was given the same or the next day. The impeachment was on the 16th, and the certificate was issued on the 20th of February. I was acting as the medium of communication between Clayton and various parties."

Chamberlain, witness for Clayton, says: "Gantt placed the matter of his resignation to assist Edwards in my hands, and said that he represented Mitchell also. By changing the returns from Pulaski County, Edwards would be seated. I proposed this to Edwards, and, with his approval, saw Governor Clayton about it; when the legislature met a resolution was introduced to raise a committee. Judge Bowen, Tankersley, and Judge Bennett were present when I saw Clayton. Clayton told me to hurry up the mandamus case, and to get the other returns from Pulaski County. I was a supporter of Clayton, and opposed Boles. Edwards was urgent for the investigation. Judge Bowen furnished the names of the committee to me, and I handed them to Tankersley, the speaker. Tankersley left off C. C. Waters and put on Mr. Ham, because Waters was dilatory about the matter. Judge Bennett, then circuit judge, went into the house and urged Waters to act. Soon after Bennett was appointed supreme court judge. Judge Watkins brought a paper to me from Gantt, proposing to decline a contest for his and Mitchell's seats if Clayton would issue a certificate to Edwards. Bennett took the paper to Clayton, returned, and said Clayton would not sign it. Gantt sent in a letter to the house stating he would claim his seat unless the agreement to issue the certificate to Edwards was carried out. The certificate was issued, and Gantt and Mitchell withdrew. Saw paper from Gantt in Judge Watkins's hands containing his proposition about Edwards, and stated the fact to Clayton, Bowen, and Bennett. This was not long before the Mallory committee was raised. I supposed Bennett to be one of Clayton's confidential advisers and friends; almost always saw him in Clayton's office, and saw him frequently on the floor of the house. The main object of the investigation was to seat Edwards in Congress; this was understood all round. It was understood by me in advance, and, I supposed, also by Bowen; that the committee of investigation, whose names Bowen gave me to hand to Tankersley, would report so as to seat Edwards. Bowen was then supreme judge, and I think Judge Bennett knew all about the committee. Edwards left the matter of the investigation with me, requesting me to do all I could, which I promised to do. I told him he might go home and rest perfectly easy; that he would get his certificate. I told Tankersley that those were the names of men he was desired to appoint on the Mallory committee. I think I told him that Bowen sent them."

Battle, Democrat, says: "I voted for Clayton on his first election; after the election my friends told me they had pledged me to Clayton to vote for him before the election; I voted for Clayton to make Johnson governor."

White, secretary of state, says: "Had no evidence of the election in my office, except the returns; the returns in every view showed Boles had a majority; the governor produced no papers on which he relied in issuing the certificate to Edwards; I issued it under his direction. The clerk in my office first informed me that Governor Clayton had decided to issue the certificate to Edwards; I asked him on what ground; if the governor had given any reason. He said none; and I told him to make a written memorandum of the transaction, which was done. There were no affidavits or petition touching the election brought to my notice by Governor Clayton."

W. S. Olivir, witness for Clayton, says: "Clayton advocated the election of Boles and the Republican ticket for the legislature in Pulaski County; Clayton advocated the election of Brooks and Hodges in that county in all his conversations with me." (We will see directly what measures Clayton advocated to keep them from their seats when it was known they were opposed to his nomination for Senator.)

Catterson says: "Isaac C. Mills was Democratic candidate for sheriff in Pulaski County in 1870; he was supported by Clayton's political friends; was afterward appointed United States marshal for the eastern district of Arkansas by President Grant, on Clayton's recommendation. Harrington, now United States district attorney for Arkansas, supported and worked for Mills, and was generally understood to have supported Edwards in his contest for his certificate."

Having presented these facts to show the intention of Governor Clayton in issuing the certificate to Edwards, I will now give, very briefly, the action of the Mallory committee, which was raised in the legislature to investigate the elections in Pulaski County, and framed, as Chamberlain's evidence clearly shows, with a view to decide in favor of Edwards. Being a joint committee, they appointed Senator Mallory chairman, and pretended to proceed with the investigation.

Joseph Brooks was contesting for his seat as senator, and held a certificate of election from the county clerk.

J. L. Hodges, Gantt, and Mitchell were contending for their seats, and held certificates. Chamberlain, Goad, and Pilkington were also contending as opposing candidates. The latter were known as Clayton men. General Upham was appointed clerk of the committee. I should say that, by the returns, the Clayton men were defeated, so the investigation had a double purpose—to seat Edwards in Congress and to seat Chamberlain, Goad, and Pilkington, who favored Clayton's election.

Chamberlain, Clayton's witness, says: "The following-named witnesses, whose testimony appears in the report of the Mallory committee, were never examined by the committee, to wit: J. W. Raybun, Calvin Pemberton, Milo Arbuckle, John W. Mooney, Isham White, Harvey Harrison, and R. R. Carlisle. I took their affidavits myself. I took some in the office of Mr Fletcher, who was a Democrat. General Upham, secretary of the committee, who was a warm friend of Governor Clayton, told me he desired a quiet place to take the testimony of certain witnesses. He said many desired to testify whose testimony he did not want, among them Joseph Brooks and J. L. Hodges. I got the key to the law-office of Faust & Ratcliffe at Upham's request. The office was in a room in the rear of the building, approached by a dark passage in which there was no light. One member of the committee came that night, Mr. Cohn, I think, member of the house, devoted to Clayton, and who was afterward appointed clerk. The committee had met before in Upham's office, across the street from the State-house." (The witness does not say whether any witnesses were examined.)

Hodges says: "I endeavored to get before the Mallory committee to testify, but never could succeed. I was never notified of the time and place to take proof. I went one night by appointment of the committee, but there was no member of it present. Failing in my efforts to get before the committee, I called upon General Upham, the secretary, and proposed that, as I could do no better, that he should take my testimony. After making my statement for some minutes, I discovered he was taking down what I had not said. I charged it upon him, but he would not allow me to make the corrections. The testimony reported by the Mallory committee as mine was not given by me."

Battle says: "Was a member of the joint investigating committee of which Mallory was chairman. The committee sat a few times, examined *Chamberlain*, *Hartman*, Webster, John Reigler, N. L. Pears, *S. R. Harrington*, Hagan Green, and *Jas. V. Hitch*. [It will be observed that the witnesses whose names are italicized were no doubt very swift. Fitch did the registration that they were investigating. Chamberlain, after advising with Clayton, Bowen, Bennett, and Edwards, got up the investigation at Edwards's and Clayton's request, and furnished the names of the committee to Tankersley, the speaker, and the committee called in those special friends of Clayton, whose names are italicized, to do the swearing.] The witness says Hodges was not examined before the committee. I did not know that the report of the committee was going to be made until it was announced in the house. I did not unite in it, nor approve it. It was made by C. C. Waters, in the house, who was afterward appointed judge of the criminal court in Phillips County. Waters was never present when the committee sat."

Joseph Brooks says: "In an interview held by Governor Clayton, Lieutenant-Governor Johnson, Judge Bowen, J. L. Hodges, and myself, just before Governor Clayton's second election, that Governor Clayton then stated to him that the Mallory committee and its proceedings were projected simply for the purpose of a counter pressure to a fight, which he understood that we were putting up on him in Washington." Brooks told him "that he and Hodges had been wrongfully and outrageously and unlawfully kept out

of their seats, through his influence chiefly, through the power of the star-chamber Mallory committee." These statements are corroborated fully by the witness Hodges, and are not denied by Governor Clayton. To the account of this interview, as given by Brooks, who is a very intelligent man, I especially invite the attention of the Senate.

As the fifth and sixth specifications of charges both relate to the means employed to remove Lieutenant-Governor Johnson from office, and thus remove the last obstacle to Clayton's coming to the Senate, I will treat them both together.

The proceeding by *quo warranto* has already been referred to. It was instituted for no other purpose than to fulfill the pledge which Clayton had given his friends repeatedly, that he would not accept the Senatorship until he had made way with Johnson. When that proceeding failed, his friends holding him to the pledge, he resigned, under the first election. In the mean time much bitterness had been engendered and division taken place among his friends and opponents in the legislature growing out of—first, the indignation of some at his attempt to overthrow Johnson on so frivolous a pretext; secondly, the attempt made by his partisans to impeach Lieutenant-Governor Johnson; third, his resigning the Senatorship, and, fourth, his delay in carrying out the agreement with General Edwards. The impeachment of Johnson, which was another effort made to get rid of him, was based upon a ground as frivolous, if possible, as the ground upon which the *quo warranto* was instituted. The charge against Johnson was that he was guilty of "high misdemeanors and maladministration," because he swore in Joseph Brooks as a member of the senate on his certificate of election which he presented after having appealed in vain to Senator O. P. Snyder and Senator O. A. Hadley, zealous partisans of Clayton, to present his certificate to the senate. And just here I will break the thread of my views in order to show how this matter was manipulated by Governor Clayton. Brooks says: "I held a certificate of election as senator; I asked both Snyder and Hadley to present my certificate and they declined; I was kept out of the senate until after Clayton's first election; was then sworn in on presenting my certificate; I moved the reference of my credentials to the committee on privileges and elections; the committee reported unanimously that I was entitled to my seat. Eight days after I was admitted I offered several bills; one was to make a disposition of the swamp lands, estimated at several millions of dollars. There were before the legislature what was called the levee bill, intended to appropriate the same lands for railroads. Just after I introduced the bill Senator Mallory moved a recess; it was taken, and at 2 o'clock p. m., when the senate assembled, Senator Young, from the committee on privileges and elections, made another report to unseat me and to seat my opponent, Riley, a Democrat. No evidence had been taken by that committee. I had not received any notice of contest by Riley. The previous question was at once ordered on the resolution to unseat me. I appealed for an opportunity to be heard. I wrote a note to Senator Sarber (a supporter of Clayton) to intervene for me. He said he would consult with Governor Clayton and let me know if I could be heard; he went and returned, saying he had seen Governor Clayton, who was in his office with Judges Bennett, Searle, and Bowen, or McClure (not certain as to which of the last two named), and that they were consulting on the subject; that the governor signified he would let him know in a few minutes; that he would go again and inquire of the governor if they might adjourn the question over till morning.

"I heard nothing more from Sarber. I then sent a message to Clayton by Joseph Myers, who returned no answer. The question was not adjourned over, and I was ejected from the senate that evening."

The above is a mere abstract of a pitiful story told by a man of great intellect, remarkable intelligence, and quick conscience, who, on account of his opposition to Clayton's election and disapproval of his conduct, was thus ruthlessly crushed without even a hearing. But to resume:

These two efforts to depose Johnson having failed, another election being necessary, and his friends being resolved not to vote for Clayton until he got Johnson out of office, another plan was devised. Strategy now came into play. A conference was held. Brooks and Hodges were invited to meet Clayton, Bowen, and Johnson. They met, and the following is Brooks's account of the interview. "Clayton stated that he was pledged not to resign and leave Johnson to become governor; that some arrangement must be made so that he could carry out his promise, in order that he might go to the Senate. The meeting was called to make an adjustment with Hodges and myself and our associates on the ticket in Pulaski and White Counties, and with Johnson. He repeated his often-expressed desire to be United States Senator; the earnest efforts he had put forth to secure it; that it was more than the dream of his life; that he was very ambitious; his heart was set upon it; that he was as ambitious as Cæsar; that he would not only be United States Senator, but that, if he had the opportunity, he would sway the scepter of universal empire. I answered, he knew full well that we had been opposed to his election; that it was a new development in political tactics that the successful party (himself) had to be conciliated; that though he had secured his election by means we did not and could not approve, he should quietly take his seat and we should be permitted to take ours in the

general assembly. Bowen seemed equally interested with Governor Clayton, and to represent Clayton's views and feelings. One condition necessary to adjustment, they both said, was that they should expect and require that our friends in the house, not only those who were to be admitted, but other friends of ours who were then members of the house, should vote and act on the Hot Springs contest with the Clayton men. (This was a contest for seats in the legislature.)

"One of them said that I would be expected to use my influence with those colored members with whom I was supposed to have some influence to have them vote against the contestants in the house. I said they were sworn representatives of the people, and under obligations of the most solemn character to vote and act in that and every such matter in conformity with the facts and evidence as they understood them when presented; that if they found, in their unbiased judgment, that the contestants, agreeably to the testimony, were the members-elect, I could not, of course, counsel them to perjure themselves; for myself I claimed to be lawfully elected; stated to the governor I thought he knew I was. If I was lawfully elected, then I claimed the seat without conditions and without pledges; that I believed myself to be a Republican, not only unquestioned, but unquestionable; that if admitted to my seat, on all political questions I would undoubtedly act and vote with Senator Clayton's friends if they were Republicans; with respect to general legislation I did not regard myself under obligations to Governor Clayton or anybody else, except my constituents. Johnson expressed his wish for an adjustment so that Clayton might go to Washington and take his seat. Clayton and Bowen then suggested that Clayton might retire and let Johnson try his hand as governor. I answered that I thought Clayton's friends were not the men to be consulted with respect to the State administration; that I felt a very great aversion to any such horse-swapping on the subject; that Johnson was as much lieutenant-governor as he was governor; that he had been elected, after the fashion he had been, United States Senator; I thought the law ought to take its course; that we required no conciliation except for Clayton to go on as Senator, let the constitution and laws of the State take their course, and for them to suspend what I designated their star-chamber performances through the Mallory committee; that Hodges and I and our associates on the ticket had been denied the right of a hearing there, and that there could be no harmony or restoration of friendliness of feeling unless they either gave us a chance to be heard fully and fairly before that committee or the committee dissolved and their *ex parte* proceedings were cast into oblivion. Clayton replied that he thought, if other matters could be arranged, that there would be no difficulty with respect to that committee; that it was projected simply for the purpose of a counter-pressure to a fight which he understood we were putting up on him at Washington. I replied no fight had been put up on him, nor was any contemplated; that we and our friends were entirely content that he take his seat unmolested; that while we believed we had been outrageously kept out of our seats, through his influence chiefly, that was passed. Clayton expressed the opinion that if our delegation (from Pulaski County) had been admitted at the organization of the general assembly he would have failed of his election. Finally, late in the night, perhaps day-dawn, Bowen asked me if I would be satisfied with any adjustment made between Clayton and Johnson. I replied I had nothing to do with such an adjustment, and would make no trouble about it. We separated about the crack of day without any further adjustment than I have named.

"I understood Governor Clayton's remarks, that I have in part stated, to be to the effect that the Mallory committee was projected by himself, and its proceedings carried forward under his direction, with a view, as he stated it, to furnish counter-pressures against a supposed fight of ours against him in Washington."

The foregoing statement of Brooks is confirmed entirely by Hodges. This proposition made by Clayton and Bowen to influence votes to seat members without respect to their rights, and, in consideration of such influence to be exerted by Brooks and Hodges, graciously to consent that Brooks and Hodges might take their seats, not being accepted, still another device was hit upon, and that was to secure his seat by the use of money. O. A. Hadley was then delegated to wait upon R. J. T. White, secretary of state, and after a few blandishments he made the direct proposition to pay him $5,000 in money and $25,000 worth of first-mortgage bonds of the Mississippi, Ouichita and Red River Railroad Company to resign his office. It is hardly necessary to say that this masterly stroke was successful. This was just before Clayton's second election. It had been previously arranged that Johnson, who was all along the stumbling-block, if White would vacate his office, would resign and accept it; O. A. Hadley would be elected president of the senate, become *ex-officio* governor; Clayton would be re-elected and accept the place of Senator. Hadley says that White's resignation, Johnson's resignation and appointment to White's place, and Clayton's nomination all occurred within less than an hour of each other. Why these events occurred in such rapid succession and so immediately before Clayton's re-election we will better understand when we come to consider the last charge.

Now as to a few facts bearing upon the purchase of White. I will let Mr. White

tell his own story, premising by saying that it is not only uncontradicted by any witness, but not even referred to by Clayton when on the stand. Referring the Senate to his testimony for the whole story, I content myself with mentioning the material facts: "O. A. Hadley called to see me. He said it was understood and agreed if I would resign I should not suffer pecuniarily, and that parties with whom he had conferred had agreed to see me out, if I suffered pecuniarily, and he mentioned the sums which they supposed I would be a sufferer. He named a sum, $5,000 and $25,000 in $1,000 first-mortgage bonds of the Ouachita and Red River Railroad Company; we separated there. I called on Johnson to know if the thing as represented was true.' He said so, and it seemed to turn out that way afterward. I do not think I saw Hadley any more on the subject. I never called on Governor Clayton. He once passed me and asked me whether Senator Hadley had spoken to me on the subject, and I told him he had. We parted, and there was nothing more said. I resigned my office soon after. I met Governor Clayton in New York a short time after that, and spoke to him on the subject; the matter was lightly touched, a mere passing remark; and some time afterward I received a letter from him, inclosing a certificate of deposit on a bank in New York for $5,000, and twenty-five $1,000 first-mortgage bonds of the Mississippi, Ouachita, and Red River Railroad. The letter was signed by Governor Clayton, and contained nothing but, 'I inclose you' thus and so." When asked if he understood what they meant, he says, "I did; the papers showed for themselves what they meant." The witness attempts to show that other matters entered into the consideration for accepting this money and these bonds, but it is a most "lame and impotent conclusion." He admits that when Hadley called on him the subject of conversation was about his losses by resigning his office, and says that his salary and fees of office given up by him under this agreement were worth from $6,000 to $7,000 per annum. The value of the bonds received by White may be estimated by the statement of the witness McLane, who says that he sold the same number of railroad bonds ($25,000) at 32½ cents on the dollar. White's pay for resigning his office, at this estimate, would be over $13,000. By buying off White, and appointing Johnson to his office, an obstacle otherwise insurmountable in Clayton's path to the Senate was removed. To appreciate the value of this success, we have only to bear in mind that witness after witness who voted for him testifies that unless he had removed Johnson he could not have been elected. His own party friends would not have supported him, because they were resolved to do no act that would result in making Johnson governor. So, by removing Johnson, by paying White to resign and appointing Johnson to his place, he virtually bought the votes of his own friends.

The seventh and last charge is that Governor Clayton purchased his election by appointments to office of many of the members of the legislature, and by paying them money. It is answered to this charge, so far as relates to the appointments to offices, first, that no such agreement was made, and, secondly, that the appointments, which are not denied, were made by Governor Hadley, who succeeded Clayton. Before stating the facts, I will remark that Clayton was elected on the 15th of March and Hadley was installed as governor on the 17th of March. This will explain why most of the appointments were made by Hadley. Clayton was certainly too shrewd to "pay the piper before the dance was over." Hence he made but few appointments before the votes were delivered. Besides, some of these appointments were made to offices created during the session of the legislature, and some of them by acts passed after Clayton's election though they and the persons to fill them had been agreed upon in caucuses of the Clayton men before his election. From the split which occurred among his friends in the legislature, from the causes which I have already mentioned, and the decided opposition of the "Brindle-tails," or Brooks faction, and most of the Democrats, his second election was very doubtful. This is shown by the herculean efforts which he and his friends put forth for some time before the second election. Frequent caucuses were held, conferences at night were numerous, and continued up to a late hour the night before the election. The doubtful issue of the contest is further shown by the vote on the second election.

In the house, first election (house journal, page 74):

Votes cast	7[illegible]
Of which Clayton received	71
Necessary to a choice	40
Majority	31

In the house, second election (house journal, page 715):

Votes cast	78
Clayton received	42
Necessary to a choice	40
Majority	2

In the senate, first election (senate journal, page 44):

Votes cast	25
Clayton received	23
Necessary to a choice	13
Majority	10

In the senate, second election (senate journal, page 272):

Votes cast	23
Clayton received	15
Necessary to a choice	12
Majority	3

Thus it appears that his first majority (41) was reduced on the second election to 5.

Let us inquire now whether there were more than 5 members of that general assembly voting at that last election who received lucrative appointments from Governor Clayton, or from Governor Hadley by agreement with Clayton. We will first take Hadley's own testimony on this point. He says:

"I appointed the following-named members of the legislature to office:

"S. W. Mallory, senator, commissioner of claims and director of the Mississippi and Ouachita Railroad Company.

"John W. Sarber, senator, trustee of the industrial university.

"P. H. Young, senator, to same position.

"Conway Barbour, representative, assessor of Chicot County.

"E. H. Chamberlain, representative, a justice of the peace.

"M. A. Cohn, representative, superintendent of public instruction.

"I. P. Grady, representative, sheriff Crawford County.

"George Haddock, representative, assessor of Clark County.

"W. C. Hazeldine, representative, circuit judge.

"G. H. Joslyn, representative, county and probate judge of Lincoln County.

"Herbert Marr, representative, circuit school superintendent.

"Thoms Orr, representative, assessor of La Fayette County.

"J. A. Robinson, representative, assessor of Desha County.

"C. C. Waters, representative, circuit judge.

"E. R. Wiley, representative, justice of the peace.

"C. W. Tankersley, representative, superintendent of penitentiary.

"A. Hemmingway, senator, was appointed commissioner to locate county site for Lincoln County.

"G. W. Prigmore, representative, circuit court clerk of Jefferson County, March 17, 1871, the day Hadley was installed. Hadley says he does not remember whether he or Clayton appointed him."

I will next take the testimony of E. A. Fulton:

"D. P. Belden, senator, was appointed justice of the peace in Hot Springs County.

"E. D. Rushing, senator, appointed justice of the peace.

"A. O. Espey, representative, appointed justice of the peace.

"Carl Pope, representative, appointed justice of the peace.

"T. G. T. Steele, representative, circuit court judge.

"J. M. Alexander, representative, justice of the peace.

"James V. Fitch, representative, circuit clerk of Pulaski County and clerk and recorder of criminal court of same county."

These offices (Fitch's) are regarded as the best paying in that county, and are worth about $10,000 per year. This criminal court was created by the same legislature that elected Clayton. The act creating the office of superintendent of the penitentiary, to which Tankersley was appointed, was also passed at the same legislature.

We have here the names of nineteen representatives and six senators—twenty-five members of that legislature in all—who were appointed to lucrative offices, and all of whom are recorded in the journals of the house and senate as voting for Senator Clayton in his second election. Of the fifty-seven men who elected him, nearly one-half were appointed to office. The very pregnant question arises just here, How did this come about? Was it by design or by accident? Hadley appointed most of them, but why? What interest had he in rewarding men from whom he had received no favors, so far as the testimony shows? But we are not left entirely to conjecture in solving this question. There is much positive testimony which shows that many of these votes were obtained by contract. Hadley admits that he appointed some of them at the suggestion of Clayton. Some of these appointments were arranged in caucus before Clayton's election.

And just here I will remark that while Clayton says he never attended a single caucus during the session of the legislature, his own witness, W. S. Oliver, says that Clayton was generally present at all the caucuses. He attended them himself and saw Clayton there. Chamberlain, also his witness, says he attended a caucus of Republicans when Clayton and Bowen were present. The levee bills, the penitentiary bill, and certain railroad bills were agreed upon in caucus; so was Clayton's nomination.

Scales, a Democrat who voted for Clayton on the second election, says that in an interview he had with Governor Clayton before his election, and in talking on that subject, Clayton told him if he would name good men to fill the office of magistrate in his county he would appoint them. Hadley was present and said he would agree to whatever Clayton said he would do. That was in the event Hadley became governor. This was after Johnson was appointed secretary of state, and before the election of Clayton. Had a conversation on the same day with Isaac C. Mills, who was supporting Clayton. I think I told him I had assurances from Clayton and Hadley that these appointments would be made; told him I would support Clayton, and told Mills of my conversation with Clayton. I voted for Clayton, and considered when I voted for him that these vacant offices in my county would be filled. I gave the names of some seven or eight Democrats and Republicans to Hadley and he appointed them. Clayton appointed some before he resigned. Hadley did not appoint some I recommended, and that is the only complaint I made against him. Neal, a Democratic member of the house, voted for the articles of impeachment against Clayton. When the resolution was passed, fourteen senators, as before stated, to break the quorum of the senate, and thus to prevent action on the articles of impeachment, "took to the brush" (using the language of the witness) and were gone a week, remaining during that time at the dwellings of W. S. Oliver and Judge Bowen, and visited while there by Clayton. Meanwhile Neal had evidently been manipulated, for the committee managing the impeachment in the house was changed and Neal appointed by Tankersley, the speaker of the house, chairman of that committee. The committee on the second or third day after Neal was appointed, without taking any evidence to support the articles of impeachment, except to examine some records in Clayton's office, reported back to the house that they could find no evidence on which to sustain the charges. Neal had two measures of much importance to him pending before the legislature. He wanted two courts established and desired Clayton's influence to pass the bill. The bill was afterward passed. Neal did not vote for Clayton, and gives the reason why he did not vote at all, that the election came off at 11 o'clock instead of 12 o'clock in the day. The house journal shows, page 715, that the election was held in accordance with the provisions of the act of Congress, which designates 12 meridian as the hour.

McLane swears that he was in the house when the election was going on, and that he saw Neal during the roll-call get up and leave the chamber. Neal was also interested in a railroad for which he wanted State aid, which could only be granted by the board of commissioners, of which Clayton was one of three members.

The negro (White) senator was also a competitor of Clayton's in the election, and was instructed by his constituents to vote for himself. He did so, but before the announcement of the result of the ballot, he rose and said, "I change my vote to Powell Clayton."

McConnell says that Clayton and Bowen called at his room at a late hour the night before the election and stated that they had just seen White (this senator) and another member of the legislature named Mason, and had fixed the matter with them, but that they were very expensive.

McLane swears that White told him he was visited after 12 o'clock the night before the last election of Clayton by Clayton and Hadley; that they staid with him an hour or two and fixed the matter up.

Fulton swears that White boasted that he got $25,000 worth of stock in a railroad while he was senator.

Another witness testifies that White was charged at a public meeting where he was present with having received $25,000 in bonds for his vote, and did not make any denial.

McConnell testifies that Clayton told him to say to Steele (senator), who was considered doubtful, that he (Clayton) would appoint him judge of the circuit court if he would vote for Clayton for Senator. Steele voted for Clayton and was appointed judge of that court, *vice* Searle, resigned.

Chamberlain (projector, with Clayton and Edwards, of the "star-chamber committee," and Clayton's witness) says: "Clayton asked me to vote for him on his second election; said if I would he would make out for me a commission as justice of the peace right then. I voted for Clayton, and got my commission afterward from Hadley." He states, however, that he did not vote in consideration of the commission. *Per contra*, let it be remembered that between the first and second Senatorial elections Chamberlain had broken out the traces. The impeachment of Johnson to depose him, and thus ful-

fill Clayton's pledge, no man can doubt, was Clayton's own work. Here Chamberlain broke. He opposed that assault and voted against it. Hence the necessity for his recapture. McConnell says that Chamberlain told him Clayton had not treated him right, and if Clayton expected his support he must pay for it.

McConnell says Clayton told him just before his second election that Johnson was going to be impeached, and he felt sure of success, and asked witness to assist. Witness saw J. P. Grady, representative, and reported to Clayton that he thought Grady was "bullheaded," meaning stubborn. Clayton said, "Tell Grady he can have the sheriff's office, or anything reasonable"; that he must have his vote. Mr. Grady voted against the previous question when it was ordered on the motion to impeach Johnson (house journal, 231). But he afterward voted for Clayton at his second election, and received the appointment of sheriff. The same witness says that Clayton told him, in the presence of Mills, district attorney, that Scales's (Democrat) vote could be got by giving him the patronage of his county.

To show that these appointments were all agreed upon before the Senatorial election, I will state that McLane testifies he was informed before the election by Tankersley that he (Tankersley) would be appointed superintendent of the penitentiary; by Sarber, that Mallory would be appointed commissioner, and that Neal would get his railroad aid and county bills, and that Waters would be appointed judge of the criminal court.

Thus it will be seen that five members of the legislature, to wit, Scales, a Democrat; Chamberlain, a Conservative, who ran on the ticket in Pulaski County, which was supported by the Democrats; Steele, who was considered doubtful as to his vote; Grady, who had refused to vote for Clayton's measure impeaching Johnson, and White, a rival candidate for the United States Senate, are shown by direct testimony to have given their votes for Clayton as Senator at the election under which he now holds his seat, under promise of a valuable consideration, which they afterward received, while the opposition of Neal, a Democrat, was overcome by some magic influence, supposed to be a grant of State aid to his road by Governor Clayton. Clayton's majority on that election was five; the men whose names are given above, excluding Neal, were five in number, and all voted for Clayton.

There is another very important fact, to which I now call attention. It is that even the majority he received would have been overcome had the delegation from the Hot Springs district and Pulaski and White Counties been allowed to take their seats. They were undoubtedly excluded by the iron hand of Clayton, and to prevent their opposition to his election. He had but one purpose, as shown by the evidence, to accomplish through the aid of that body, and that was to come to the Senate. Everything was subsidized and subordinated to that end.

McConnell says that Clayton told him, when he took Haymaker to see Clayton about his (H.'s) levee bill, that there were four levee bills before the legislature; that they were good to use for political purposes; that he would keep out of the fight for a while, and then favor the bill best suited for political purposes.

Various witnesses testify that many of Clayton's friends and supporters, in the legislature and outside of it, were interested in these bills and several railroad bills. Neal was interested in a railroad; so was Sarber; so was Judge Bowen. Judge Bennett was interested to the extent of a fee of $70,000. And all these were looking to the governor for State aid and his influence.

By the returns in the secretary's office the delegation from Pulaski and White, opposed to Clayton, were elected. But White, the secretary, sent in the roll of members-elect with the names of Clayton's supporters from those two counties upon it. Among those opposed to him and left off the roll were Hodges and Brooks. We have seen that Brooks told Clayton in that remarkable interview that he knew that Brooks and Hodges were opposed to his election, and that he told him further he knew the delegation from Hot Springs district, three in number, were also opposed to him, and that he (Clayton) had originated the Mallory or star-chamber committee, for the express purpose of keeping these opposition candidates out of the legislature; that Clayton did not deny the charge that he raised the committee, but simply stated it was raised to countervail their opposition to his getting his seat at Washington. We further know the proposition that Clayton then made, that he would consent to admit those two delegations in order to remove all obstacles to his election. That he prevented their being seated to secure his election is shown by the following facts: The Hot Springs delegation, after being kept out of their seat through the report of the Mallory committee from the 2d day of January until after Clayton's election on the 15th of March, were finally received into the house. Brooks, of the Pulaski delegation, the most powerful opponent, intellectually and morally, that Clayton had, was kept out until after the first election, was after the election declared by the committee unanimously to be entitled to his seat, was, without notice or hearing before the second election, on the report of the committee on privileges and elections, ejected from the senate, and Riley, his Democratic opponent, seated, while

Hodges and the other candidates for the house from the Pulaski disrtict were never permitted to take their seats. The complexion of the delegation from Pulaski and White, who were seated, is somewhat motley, not to say significant. They were C. A. Whittemore, a Democrat; Robert A. Howard, Democrat; E. H. Chamberlain, Democrat or Conservative; J. W. House, Democrat; and Pilkington and Goad, Republicans. The seats of Goad and Pilkington were contested by Gantt and Mitchell, Democrats, who, it will be remembered, withdrew to insure the certificate of election to Edwards. Goad and Pilkington voted for Clayton.

There are many other facts which illustrate this contest for power and place, but having already extended this review further than I expected, I will refer to but few more.

At the organization of the legislature an armed force took possession of the State-house, and no one was allowed to enter the house or senate except those who held certificates of election. Tankersley entered, as several witnesses say, almost on a run, and took his seat in the speaker's chair before he was nominated. The two houses were organized on the roll furnished by the secretary of state, who, it will be remembered, excluded from the list of members-elect some who, by the returns in his office, had a majority, but who were opposed to Clayton's election. When the articles of impeachment were about to be presented against Clayton, or had been preferred, his attached friends, members of the legislature, and some outside, formed a military company for the purpose of offering resistance. Clayton ordered arms from the arsenal at Little Rock sufficient to arm from one hundred to one hundred and fifty men, and these arms were placed in the executive office ready for use. Even his own witnesses testify that Johnson, who was then considered the head of the opposition, was a very peaceable man, and that they saw no demonstrations of force on the part of either Johnson or any of his friends. One witness, Brooks, says that this armed power had a very discouraging influence on the members who had been appointed to conduct the impeachment. Clayton and his friends, as a pretext for this, threatened bloodshed, saying that they feared Johnson and his friends would endeavor to depose the governor from office in advance of a compliance with the laws of the State, but no witness testifies to any act which showed such an intention.

However much we may differ on the demurrer to these facts, on a calm survey of this whole testimony there is one conclusion as to which, I think, all men will agree. It is that Senator Clayton is responsible for all the acts of that legislature, through its committees and otherwise, which were done to promote his election. He was the doer of many of them, and all the others were done by those who either stood in the most intimate personal relations to him, and were in almost daily conference with him, or others who were bending every energy to accomplish his one purpose. Bowen was the omnipresent and ever present, his mentor and monitor, his man Friday, his very shadow. Hadley was his creature, was made governor by him, and obeyed his mandates to the letter, as shown by the appointments Hadley made. Storey said that when he applied to have the public printing restored to him Hadley answered that he could not do so until he consulted Senator Clayton, then in Washington.

Judge Bennett, appointed by Clayton circuit judge a month after his admission to the bar for his zeal and labor in this contest, was promoted during that legislature to the supreme bench by the same benefactor. He of course was subservient. Judge McClure, the recipient of a like favor, was alike devoted. Judge Searle, who withdrew in the Congressional race, received like honors. Tankersley, whom one witness calls Clayton's candidate for speaker, devoted to the end, was rewarded by being assigned through mistake to a place *over* the penitentiary. And so with many others: Who can doubt that their acts and sayings were Clayton's own so far as they related to his election? Who can doubt, not only from these circumstances, but from the positive evidence in this case, that the five votes of Scales, Chamberlain, White, Grady, and Steele were procured directly by Governor Clayton for a valuable consideration? Who can doubt that he is directly responsible for the exclusion of those members, ten in number, whose votes were pledged against him, and who, if admitted, would have defeated his election?

Is not the conclusion irresistible that the appointment of those members of the legislature to office by Hadley was the act of Clayton himself? And, going one step further, who does not believe, considering the history of this transaction and the extraordinary fact that nearly one-half of the members who voted for Clayton were, during the session of that legislature and soon after his election, appointed, some to the most honorable and some to the most lucrative offices within the executive patronage, that these appointments were the price of their votes?

Recurring now to the transaction with R. J. T. White, is there any room left for doubt that White sold out and that Clayton bought him? Hadley made the arrangement, Clayton recognized it by a simple word or wink from White, and then Clayton paid the price in the very amount of money and of bonds, and the very class of bonds (first-

mortgage Ouachita and Red River Railroad), which Hadley told White would be paid. And Clayton by the use of this money secured the votes of his own party friends, three or four of whom on this investigation have sworn they would not have voted for him unless he had removed Johnson. Johnson was removed by removing White. If this be true, then it is clear that Clayton obtained his election solely through the power of money. If he had removed Johnson by the *quo warranto* on the judgment of a competent court there would have been nothing corrupt in it, or if the impeachment had resulted in deposing him after a fair trial it might have been considered very sharp but not corrupt practice. But when these failed, and he had no other means left by which to obtain a seat in the United States Senate, except the power and influence of gold, used and applied as it was, I cannot regard that means as other than corrupt. The circumstances of the bargain show that he and White were of the same opinion. Clayton's emissary approached White at a late hour of night after White had gone to bed—made the proposition. The interview was "short, sharp, and decisive." White said he would consider. When he and Clayton met on the street Clayton referred to the subject and passed on. When they met in New York after the election White renewed the subject with a single remark; Clayton signified his obligation, and when Clayton inclosed the money and bonds, instead of sending his own draft (which would have an ear-mark) he sent a certificate, reading that *Jackson E. Sickles* had deposited to White's credit in a New York bank $5,000.

Taking a retrospective glance over the field of this contest, brought on by ambition, made fierce by party strife, and ending in shame, what a sad spectacle do we behold! Clayton's plan of battle was laid while his enemies slept, and long before the day of action. Through executive power he commanded the situation, held it, and won, but with irreparable loss. We see executive power cruelly brought to bear on Storey, party ties subrogated, friend and foe falling without discrimination. We see legislators obeying his beck, and crushing Brooks and others at his nod. We see the representatives of the people seated and unseated at his pleasure. And all these to put him in the Senate! We see registrars appointed and protected by him when charged with fraud. We see overtures to his enemies to join hands and wage war on his friends. We see friends and foes, Democrats and Republicans, following his banner, each confident he was their leader, and each, like the irate knights, seeing a different color on either side the shield. We see an inoffensive citizen, honored by his people with the next highest State office in their gift (and given simultaneously with the highest, which they conferred on Clayton), assailed without cause, by *quo warranto*, to gratify ambition. We see a plain law—so plain that he who runs may read—violated, and a certificate of election issued, under a bargain made for his own promotion, to one not entitled to it. We afterward see this Democratic favorite ejected from his seat in Congress, obtained on that certificate, and his opponent, a Republican, seated by a rebuking majority vote. To furnish an apology for this act we see him raise a packed committee to investigate alleged frauds, and "to report in favor of Edwards." We see the certificate of election withheld for more than two months after it should have been issued, and more than one month after the report of that committee. This ambition still foiled, we see it turn again on Johnson with ferocity increased by disappointment, and attack not only Johnson's position but his honor. Here we see the mercenaries of this leader of two opposing parties discover the reverse side of his banner and desert. A few of their opponents desert and join them and turn upon their former leader. To escape defeat he withdraws his adherents to the headquarters of his first-lieutenant, Bowen, where they are quartered for six days. Strategy meantime is active. One of the opposing leaders, Neal, is captured—joins the enemy—carries a few followers, and the combined forces return, and Neal reports against impeachment. Still ambition is not sated. Still foiled by its foe, Johnson, it curbs passion, abandons the open field, and, encouraged by its success with Neal, again resorts to strategy. An armistice ensues, and Johnson is invited to a counsel. We there see this ambition tender gold to White and office to Johnson, and its hitherto unconquerable foe surrenders. Though the opposing chief surrendered, his followers did not, and victory was not assured. The stragglers, who had sworn they would not advance under Clayton against the opposing forces until their commander, Johnson, had been either killed or captured, hearing of his capture, returned to the ranks. This ambition, still fearing a field engagement, tried again the skill of strategy. Gold and promotion to office were tendered to a few of the enemy; they grounded their arms, joined Clayton, and, thus reenforced, he conquered.

Is it not clear, on a full review of all these facts, that money, or its equivalent, alone gave Clayton his majority of five? Taking the buying of White, by which Johnson was overcome; the votes of the Republicans opposed to his election if Johnson remained lieutenant-governor (three or four of whom testify here that they would not have voted for him except on that condition, and who further swear they did vote for him), and counting those with whom he bargained to give them lucrative offices for their votes, it

is demonstrable by figures that he got more than five votes (his majority) by these two means.

The only remaining question, granting the facts, is, what is the law? On this head I shall be brief. I consider it unnecessary to cite precedents or quote authorities; for the single question is, was using money and lucrative offices in that way fraudulent and corrupt? If so, they make the election void, and the Senate may declare the seat vacant. If, in the judgment of the Senate, such conduct was not corrupt and fraudulent, there is no case made out. This I understand to be the generally accepted rule of law in such cases.

I know there are some who go to the extreme of holding that the Senate has no jurisdiction over a Senator for any offense he may have committed prior to the moment of his election, even though the act was bribery in securing his election. And it is founded on the doctrine of State rights. To my mind this rule is not only unsound but repugnant to State rights. For I can conceive of few higher rights the people of a State, who are the sovereign power of that State, have than to be represented by a Senator who is chosen in conformity to law. The legislature are but the agents of the people. They cannot exceed their delegated power. A part of their delegated power is to elect Senators for their principal, the people—the sovereign. An inseparable incident of that power thus delegated is that it shall be exercised fairly and honestly. The law will never imply that even a private agent is authorized to act fraudulently in transacting the business of his principal. His agency ceases the instant he commits the fraud, and he makes himself individually responsible for the act. He not only cannot act fraudulently, and bind thereby his principal, but he cannot bind his principal by a lawful act done extra the scope of his agency. This being true of a private agent, the rule is even more rigid as to public agents, for reasons I need not stop to enumerate. A legislature is a public agent. And while a court cannot inquire whether a statute was passed by a bribed majority, the people—the principal—to be bound by the statute may. For instance, if a charter for a private corporation should be obtained by a bribed majority, the people, through their legislature, may annul the contract by repealing the charter.

To apply this rule to the election of a Senator. He represents the State. He is in no sense the representative of the legislature. He is elected by the legislature as an agent delegated for that purpose. The agent must act strictly within the limits of his delegated power. Fraud lies outside of that power. And when a candidate bribes a sufficient number of the electors to secure his election, he and they knowingly commit a fraud on the people, and by every rule of law any act done through combination of an agent with a third party to defraud the principal is void. And the man thus elected (to use a solecism) was never elected. The election is void and the seat vacant. And when the fact is judicially ascertained by the Senate, it is only necessary to declare by resolution the seat vacant. I say further, that in such case it is the imperative duty of the Senate so to do, and for the reason that no other power can. The legislature of the State cannot. The people in sovereign character cannot. For the Senate alone, under the Constitution, can judge of the election and qualifications of its members. If the election is void, there has been no election and the State is *pro tanto* unrepresented in the Senate. She is entitled to two members in this body, and it would be the duty of the Senate to say one seat was vacant, that the State might fill it. Here, in my opinion, the power of the Senate to judge of the election of its members necessarily includes the right to go behind the moment and form of an election in order that it may determine whether that election was procured by bribery.

Again, the Senate is expressly clothed with power by the Constitution to judge of the elections, returns, and qualifications of its members. The "qualifications" of a Senator are prescribed in the Constitution. The "returns" spoken of are the formal evidence of his election. But the power to judge is not confined to "qualifications" and "returns." It extends to the election itself, and in terms is unlimited. Is it without limit, or, in other words, may an election be declared void for any cause for which a majority of the Senate in their discretion may see fit to avoid it? Certainly not. It is not a question of discretion, but of parliamentary and constitutional law. A cause which, according to parliamentary law, consistent with the Constitution, avoids an election, is a sufficient cause. But according to parliamentary law, both in England and the United States, an election may be avoided for bribery. The provision in the Constitution is a transcript of the parliamentary law of the English House of Commons, as it existed when, and long before, the Constitution was adopted. And it is to be observed that the same clause that makes the Senate the judge of the election of a Senator makes the House the judge of the elections of its members. The clause is as follows:

"SEC. V, ART. —. Each House shall be the judge of the elections, returns, and qualifications of its own members."

The power of the two Houses is, therefore, the same, and no one has ever doubted that the election of a Representative may be set aside for bribery.

I see no reason for a distinction between the electors who choose a member of the House and those who choose a Senator. The members of a legislature, in choosing a Senator, act as a body of electors, just as the people act as a body of electors in choosing a Representative. Either class may be bribed, and the reasons for holding that bribery avoids the election in the one case apply with equal force to the other.

And hence I say that this right, so far from infringing on State rights, is necessary to their protection. In the case supposed, the State would be defrauded by the election of a corrupt man to the Senate without the power to vacate his seat. For with two members of the Senate admitted as her representatives, and one in a seat obtained by bribing her agent, she could not elect a third to take his place without action by the Senate declaring his seat vacant.

My conclusion on the specifications, which, as before stated, I resolved into three distinct charges, is:

First, that while the evidence satisfies me that a combination did exist between Clayton and Edwards, by which, for the support of Democrats, Clayton agreed to issue the certificate to Edwards, and did accordingly so issue it; yet, that not having obtained his seat by the election held on the 11th of January, at which he received these Democratic votes, the act is one not cognizable by the Senate;

Second, that the charge made of procuring his seat by the corrupt use of money in the transaction with White is sustained by the evidence;

And third, that he obtained 5 other votes, which make his majority, and were necessary to his election, by giving to those electors as a consideration for their votes lucrative offices; and that this was as corrupt as if for the same purpose he had paid them money in kind.

[Special session of Senate, March, 1873.]

TUESDAY, *March* 11, 1873.

Mr. Wright submitted the following resolution for consideration:

"*Resolved*, That the charges made and referred to the select committee for investigation affecting the official character and conduct of the Hon. Powell Clayton are not sustained, and that the committee be discharged from their further consideration."

MONDAY, *March* 24, 1873.

On motion by Mr. Wright that the Senate proceed to the consideration of the resolution submitted by him on the 11th instant, declaring that the charges against the Hon. Powell Clayton are not sustained,

After debate, it was determined in the affirmative—yeas 36, nays 14.

On motion by Mr. Bayard, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Alcorn, Allison, Ames, Bogy, Boreman, Boutwell, Buckingham, Chandler, Cragin, Dorsey, Ferry of Connecticut, Ferry of Michigan, Frelinghuysen, Goldthwaite, Hitchcock, Howe, Ingalls, Lewis, Logan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Patterson, Pratt, Ramsey, Robertson, Sargent, Scott, Sherman, Spencer, Stewart, West, Windom, and Wright.

Those who voted in the negative are Messrs. Bayard, Casserly, Davis, Fenton, Gordon, Hamilton of Texas, Kelly, McCreery, Merrimon, Norwood, Saulsbury, Stevenson, Stockton, and Thurman.

So the motion was agreed to.

Whereupon, the Senate proceeded to consider the resolution; and

The resolution having been modified by Mr. Wright, with the consent of the Senate, to read as follows:

"*Resolved*, That the charges made and referred to a select committee of the Senate at the last Congress for investigation affecting the official character and conduct of the Hon. Powell Clayton are not sustained,"

Pending debate,

On motion by Mr. Wright, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 165–173 of the Congressional Record, special session of the Senate, 43d Cong.]

TUESDAY, *March* 25, 1873.

The Senate resumed the consideration of the resolution submitted by Mr. Wright on the 11th instant, viz:

"*Resolved*, That the charges made and referred to a select committee of the Senate at the last Congress for investigation affecting the official character and conduct of the Hon. Powell Clayton are not sustained;"

And, on the question to agree thereto,

After debate, it was determined in the affirmative—yeas 33, nays 6.

On motion by Mr. Davis, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Alcorn, Allison, Ames, Anthony, Boreman, Boutwell, Chandler, Conover, Cragin, Dorsey, Ferry of Connecticut, Ferry of Michigan, Frelinghuysen, Hitchcock, Howe, Ingalls, Jones, Lewis, Logan, Mitchell, Morrill of Maine, Morton, Patterson, Pratt. Ramsey, Robertson, Sargent, Scott, Sherman, Stewart, West, Windom, and Wright.

Those who voted in the negative are Messrs. Cooper, Davis, Goldthwaite, Gordon, Merrimon, and Norwood.

So the resolution was agreed to.

[The debate is found on pages 184–192 of the Congressional Record, special session of the Senate, 43d Cong.]

[Forty-second Congress—Third session.]

JAMES W. PATTERSON,

Senator from New Hampshire from March 4, 1867, *till March* 3, 1873.

February 4, 1873, a message was received from the House of Representatives that the House had resolved that there be transmitted to the Senate a copy of evidence reported to the House by a select investigating committee, the preamble to the resolution reciting that the evidence contained matter affecting members of the Senate. The communication was referred to a select committee. February 27, the committee reported, exonerating the other Senators mentioned in the report, and reporting the following resolution in regard to Mr. Patterson: "*Resolved*, That James W. Patterson be, and he is hereby, expelled from his seat as a member of the Senate." Mr. Patterson's term expired March 3, no action having been taken by the Senate on the resolution. March 26, the Senate resolved that "Observations on the report," &c., submitted by Mr. Patterson, be received, filed, and printed with the report, the preamble reciting that it was manifestly impossible for the Senate to consider the resolution at the session then just passed, and that it was very questionable if it was competent for the Senate to consider the same after Mr. Patterson had ceased to be a member of the body.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 42d Cong., 3d sess. The report of the committee is found in Senate Reports, 42d Cong., 3d sess., No. 519.

Special references to the debates of each day are inserted below.

TUESDAY, *February* 4, 1873.

The Presiding Officer (Mr. Anthony in the chair) laid before the Senate the following message, this day received from the House of Representatives:

IN THE HOUSE OF REPRESENTATIVES,
February 4, 1873.

Mr. Poland, from the select investigating committee, &c., submitted the following; which was agreed to:

"Whereas the evidence taken by a select committee of this House appointed December 2, 1872, for the purpose of examining into charges of bribery of members of this House, contains matter affecting members of the Senate: Therefore,

"*Resolved*, That the Clerk of the House be directed to transmit to the Senate a copy of all the evidence thus far reported to the House by said committee, together with a copy of this resolution."

Attest:

EDW. McPHERSON, *Clerk*.

Whereupon,

On motion by Mr. Patterson, and by unanimous consent,

"*Resolved*, That a select committee, consisting of five Senators, be appointed by the Presiding Officer, to whom shall be referred the communication this day received from the House of Representatives in relation to matter affecting members of the Senate, together with the copy of the evidence accompanying the same, and that the said committee have power to send for persons and papers, and to employ a clerk."

WEDNESDAY, *February* 5, 1873.

The Presiding Officer (Mr. Anthony in the chair) appointed Mr. Morrill of Maine, Mr. Scott, Mr. Wright, Mr. Stockton, and Mr. Stevenson the select committee, under the resolution of the Senate of the 4th instant, to whom shall be referred the communication yesterday received from the House of Representatives in relation to matter affecting members of the Senate disclosed before an investigating committee of the House of Representatives.

[The debate is found on page 1099 of the Congressional Globe, part 2, 3d sess. 42d Cong.]

THURSDAY, *February* 6, 1873.

Mr. Stevenson submitted the motion that he be excused from service on the select committee appointed under the resolution of the Senate of the 4th instant, to whom was referred the communication of the House of Representatives in relation to matter affecting members of the Senate, disclosed before an investigating committee of the House of Representatives; and

On the question to agree thereto,

After debate,

It was determined in the negative.

On motion by Mr. Davis, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Alcorn, Allison, Ames, Anthony, Boreman, Boutwell, Chandler, Conover, Cragin, Dorsey, Ferry of Connecticut, Ferry of Michigan, Frelinghuysen, Hitchcock, Howe, Ingalls, Jones, Lewis, Logan, Mitchell, Morrill of Maine, Morton, Patterson, Pratt, Ramsey, Robertson, Sargent, Scott, Sherman, Stewart, West, Windom, and Wright.

Those who voted in the negative are Messrs. Cooper, Davis, Goldthwaite, Gordon, Merrimon, and Norwood.

So the resolution was agreed to.

[The debate is found on pages 184–192 of the Congressional Record, special session of the Senate, 43d Cong.]

[Forty-second Congress—Third session.]

JAMES W. PATTERSON,

Senator from New Hampshire from March 4, 1867, *till March* 3, 1873.

February 4, 1873, a message was received from the House of Representatives that the House had resolved that there be transmitted to the Senate a copy of evidence reported to the House by a select investigating committee, the preamble to the resolution reciting that the evidence contained matter affecting members of the Senate. The communication was referred to a select committee. February 27, the committee reported, exonerating the other Senators mentioned in the report, and reporting the following resolution in regard to Mr. Patterson: "*Resolved*, That James W. Patterson be, and he is hereby, expelled from his seat as a member of the Senate." Mr. Patterson's term expired March 3, no action having been taken by the Senate on the resolution. March 26, the Senate resolved that "Observations on the report," &c., submitted by Mr. Patterson, be received, filed, and printed with the report, the preamble reciting that it was manifestly impossible for the Senate to consider the resolution at the session then just passed, and that it was very questionable if it was competent for the Senate to consider the same after Mr. Patterson had ceased to be a member of the body.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 42d Cong., 3d sess. The report of the committee is found in Senate Reports, 42d Cong., 3d sess., No. 519.

Special references to the debates of each day are inserted below.

TUESDAY, *February* 4, 1873.

The Presiding Officer (Mr. Anthony in the chair) laid before the Senate the following message, this day received from the House of Representatives:

IN THE HOUSE OF REPRESENTATIVES,
February 4, 1873.

Mr. Poland, from the select investigating committee, &c., submitted the following; which was agreed to:

"Whereas the evidence taken by a select committee of this House appointed December 2, 1872, for the purpose of examining into charges of bribery of members of this House, contains matter affecting members of the Senate: Therefore,

"*Resolved*, That the Clerk of the House be directed to transmit to the Senate a copy of all the evidence thus far reported to the House by said committee, together with a copy of this resolution."

Attest:

EDW. McPHERSON, *Clerk*.

Whereupon,

On motion by Mr. Patterson, and by unanimous consent,

"*Resolved*, That a select committee, consisting of five Senators, be appointed by the Presiding Officer, to whom shall be referred the communication this day received from the House of Representatives in relation to matter affecting members of the Senate, together with the copy of the evidence accompanying the same, and that the said committee have power to send for persons and papers, and to employ a clerk."

WEDNESDAY, *February* 5, 1873.

The Presiding Officer (Mr. Anthony in the chair) appointed Mr. Morrill of Maine, Mr. Scott, Mr. Wright, Mr. Stockton, and Mr. Stevenson the select committee, under the resolution of the Senate of the 4th instant, to whom shall be referred the communication yesterday received from the House of Representatives in relation to matter affecting members of the Senate disclosed before an investigating committee of the House of Representatives.

[The debate is found on page 1099 of the Congressional Globe, part 2, 3d sess. 42d Cong.]

THURSDAY, *February* 6, 1873.

Mr. Stevenson submitted the motion that he be excused from service on the select committee appointed under the resolution of the Senate of the 4th instant, to whom was referred the communication of the House of Representatives in relation to matter affecting members of the Senate, disclosed before an investigating committee of the House of Representatives; and

On the question to agree thereto,

After debate,

It was determined in the negative.

Mr. Stockton submitted the motion that he be excused from service on the said committee; and

On the question to agree thereto,

After debate,

It was determined in the negative.

[The debate is found on pages 1136, 1137 of the Congressional Globe, part 2, 3d sess. 42d Cong.]

MONDAY, *February* 10, 1873.

Mr. Morrill, of Maine, submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the select committee appointed to consider the evidence from the House of Representatives affecting certain members of the Senate be authorized to sit during the sessions of the Senate."

SATURDAY, *February* 22, 1873.

Mr. Morrill, of Maine, submitted the following resolution; which was read the first and second times by unanimous consent:

"*Resolved*, That there be paid, out of the contingent fund of the Senate, for expenses of the special committee of the Senate to whom was referred the communication of the House in relation to members of the Senate, the sum of $1,000, or so much thereof as may be necessary."

The Senate proceeded to consider the said resolution as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read the third time.

The said resolution was read the third time, by unanimous consent.

Resolved, That it pass.

THURSDAY, *February* 27, 1873.

Mr. Morrill, of Maine, from the select committee to whom was referred the communication of the House of Representatives of the 4th instant, in relation to certain matter affecting members of the Senate, together with a copy of the evidence accompanying the same, submitted a report (No. 519) accompanied by the following resolution:

"*Resolved*, That James W. Patterson be, and he is hereby, expelled from his seat as a member of the Senate."

SATURDAY, *March* 1, 1873.

[A debate on the question of taking up the report of the committee for consideration is found on pages 2068, 2069 of the Congressional Globe, part 3, 3d sess. 42d Cong.]

MONDAY, *March* 3, 1873.

[A debate on the question of taking up the report of the committee for consideration is found on pages 2184, 2185 of the Congressional Globe, part 3, 3d sess. 42d Cong.]

[Special session of the Senate, March, 1873.]

FRIDAY, *March* 14, 1873.

Mr. Anthony submitted the following resolution for consideration; which was ordered to be printed:

"Whereas at the last session of the Senate a resolution was reported from the select committee on evidence affecting certain members of the Senate, 'that James W. Patterson be, and he is hereby, expelled from his seat as a member of the Senate'; and

"Whereas it was manifestly impossible to consider this resolution at that session without serious detriment to the public business; and

"Whereas it is very questionable if it be competent for the Senate to consider the same after Mr. Patterson has ceased to be a member of the body: Therefore,

"*Resolved*, That the failure of the Senate to take the resolution into consideration is not to be interpreted as evidence of the approval or disapproval of the same.

"*Resolved, further*, That Mr. Patterson have leave to make a statement, which shall be entered upon the Journal of the Senate and published in the Congressional Record."

TUESDAY, *March* 25, 1873.

On motion by Mr. Anthony, the Senate proceeded to the consideration of the resolution submitted by him on the 14th instant, declaring that the failure of the Senate to consider the resolution for the expulsion of J. W. Patterson from the Senate shall not be inter-

preted as evidence of the approval or disapproval thereof; and granting leave to Mr. Patterson to make a statement for publication in the Congressional Record; and,

Pending debate,

On motion by Mr. Chandler, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 193–197 of the Congressional Record, vol. i.]

WEDNESDAY, *March* 26, 1873.

On motion by Mr. Anthony, the Senate resumed the consideration of the resolution submitted by him on the 14th instant, declaring that the failure of the Senate to consider the resolution for the expulsion of J. W. Patterson from the Senate shall not be interpreted as evidence of the approval or disapproval thereof, and granting leave to Mr. Patterson to make a statement for publication in the Congressional Record; and

The resolution having been amended on the motion of Mr. Morrill, of Maine, it was agreed to, as follows:

"Whereas at the last session of the Senate a resolution was reported from the select committee on evidence affecting certain members of the Senate, 'that James W. Patterson be, and he is hereby, expelled from his seat as a member of the Senate'; and

"Whereas it was manifestly impossible to consider this resolution at that session without serious detriment to the public business; and

"Whereas it is very questionable if it be competent for the Senate to consider the same after Mr. Patterson has ceased to be a member of the body: Therefore,

"*Resolved*, That the pamphlet entitled 'Observations on the report of the committee of the Senate of the United States respecting the Credit Mobilier of America,' submitted by Mr. Patterson, be received, filed, and printed with the report of said committee."

[The debate is found on page 204 of the Congressional Record, vol. i.]

[Third session Forty-second Congress to third session Forty-sixth Congress.]

RAY vs. McMILLEN; McMILLEN vs. PINCHBACK (MARR AND EUSTIS); AND SPOFFORD vs. KELLOGG (MANNING).

of Louisiana.

William P. Kellogg, whose term expired March 3, 1873, resigned January 13, 1873. January 22, 1873, credentials of John Ray and William L. McMillen, each claiming to have been elected to fill the unexpired term, were presented, and referred to the Committee on Privileges and Elections. Mr. Ray's credentials were signed by William P. Kellogg as governor, and Mr. McMillen's by John McEnery as governor. January 16, a resolution of the Senate directing the committee to inquire and report whether there was an existing legal State government in Louisiana had been referred to the committee. February 20, the committee submitted one report on the credentials and on the resolution. They reported that the State election held in November, 1872, in which Messrs. Kellogg and McEnery each claimed to have been elected governor, was void for fraud; that the Kellogg government, so called, approached more nearly a government *de facto*, and the McEnery government a government *de jure;* that had the election been fairly conducted, Kellogg and a legislature of the same political party would have been elected, but that, while the Kellogg government was in possession of the State-house, there was not a quorum of both houses of the Kellogg legislature who had any pretense of having been elected to their seats; that, under such circumstances, Congress had authority to order a new election. The committee recommended the adoption of resolutions that there was no State government existing at the time in Louisiana, and that neither Ray nor McMillen was entitled to a seat, neither having been elected by the legislature of the State, and recommended the passage of a bill ordering an election in the State. Three members of the committee submitted separate views dissenting from the conclusions of the majority. The bill referred to was rejected February 27, 1873. No further action was taken on the credentials. The expenses incurred by Messrs. Ray and McMillen were reimbursed. The proceedings of the Senate relating to the resolution of January 16 and the bill referred to are not included in the proceedings given below.

The legislature electing Mr. McMillen for the unexpired term ending March 3, 1873, elected him for the succeeding term, and the legislature electing Mr. Ray elected Pinckney B. S. Pinchback for the succeeding term. December 4, 1873, the credentials of both were referred to the Committee on Privileges and Elections. December 15, the committee reported that they were evenly divided upon the question as to whether Mr. Pinchback was upon his credentials entitled to be sworn as a member, and asked to be discharged from the further consideration of the subject and to refer the whole matter to the determination of the Senate. On the same day a resolution was submitted that the credentials of Mr. Pinchback being in due form he was entitled to be sworn as a member, and that any grounds of contest should be made thereafter. January 26, 1874, the resolution was modified so that the credentials of Mr. Pinchback be referred to the Committee on Privileges and Elections, and that the committee be instructed to inquire into the conduct of Mr. Pinchback in connection with his election. January 27, it was ordered that the credentials of Mr. McMillen be referred to the committee. The Senate debated the resolution of January 26, but no further action was taken during the session. December 23, 1874, a resolution was submitted that the Committee on Privileges and Elections be instructed to report if Mr. Pinchback was entitled to be admitted on a *prima facie* case, or if such admission should be postponed until after the investigation of the charges of corruption. January 22, 1875, credentials of a second election of Mr. Pinchback, signed by Mr. Kellogg as governor, were presented. They were referred the same day, together with all the papers in relation to the contested seat, to the committee. (All subsequent action by the Senate was on Mr. Pinchback's first credentials.) February 8, the committee reported that Mr. Pinchback had a *prima facie* title to admission, and recommended the adoption of a resolution that he be admitted. There was a minority report. The Senate debated the resolution for some days, when it was ordered to lie on the table. March 5, the same resolution was submitted and debated. December 15, 1875, the Senate resolved "that the request of W. L. McMillen, heretofore claiming a seat in the Senate, for the return of his credentials be granted." December 20, the credentials of Robert H. Marr, appointed by John McEnery as governor, to fill the vacancy occasioned by the resignation of Mr. McMillen, were presented and ordered to lie on the table. January 18, 1876, the papers purporting to be the credentials of James B. Eustis, elected by the legislature of Louisiana to the contested seat, were presented and ordered to lie on the table. January 24, they were referred to the committee. January 28, the committee reported that Mr. Pinchback having been elected to that seat, there was no vacancy, and recommended that the papers relating to Mr. Eustis be laid on the table. February 3, the Senate resumed the consideration of the resolution of March 5, 1875, and March 8, the resolution having been amended by inserting the word "not" before the word "admitted," the Senate resolved that Mr. Pinchback be not admitted. March 9, 1877, the Senate resolved that the credentials of Mr. Eustis be taken from the files and referred to the committee. December 1, the committee reported that the legislature electing Mr. Eustis, made up according to what was known as the "Wheeler compromise," was the lawful legislature; that a vacancy existed at the time of his election; and that the committee felt bound to regard the vote of the Senate on Mr. Pinchback's claim as final adjudication. They reported a resolution that Mr. Eustis be admitted. December 10, the resolution was agreed to, and Mr. Eustis took the seat which had been vacant since the resignation of Mr. Kellogg, January 13, 1873. Mr. Pinchback was allowed compensation from the beginning of the term to the period of the determination of the contest.

From the existence of two rival bodies, each claiming to be the legislature of Louisiana, arose another contest for the seat for the term beginning March 4, 1877. Mr. Kellogg's credentials were presented January 20, 1877. Objection having been made to the oaths being administered to him March 5, the Senate resolved, March 7, that the credentials lie on the table, to be referred to the Committee on Privileges and Elections when appointed. October 17, the credentials of Henry M. Spofford were presented. October 18, the Senate resolved that the credentials of Mr. Spofford be referred to the committee, and that the committee also report on the credentials of Mr. Kellogg. November 26, the committee reported that Mr. Kellogg's credentials were signed by Stephen B. Packard as governor, and that he had been elected January 10, 1877, by what was known as the Packard legislature; that Mr.

Spofford's credentials were signed by Francis T. Nicholls as governor, and that he had been chosen April 24, 1877, by what was known as the Nicholls legislature; that the committee had gone behind the certificates of the returning officers of the State, and had investigated the elections of individual members of the general assembly; that they found that the returning officers in throwing out certain polls where freedom of election was utterly destroyed, and declaring Republican candidates elected, did what they believed to be legal, and what was really equitable; that a sufficient number of the members by whose votes Mr. Kellogg was elected were lawfully and equitably entitled to their seats; that afterwards the Nicholls legislature by illegal means came to contain an undisputed majority of members lawfully elected to the general assembly, but that until and after the election of Mr. Kellogg the Packard legislature was *de facto* and *de jure* the government of Louisiana; that upon that legislature devolved the duty of electing a Senator; that the duty was performed in the election of Mr. Kellogg; that no subsequent events, especially successful revolution, could undo what had been lawfully done. The committee recommended the adoption of the following resolutions: "*Resolved*, That William Pitt Kellogg is, upon the merits of the case, lawfully entitled to a seat in the Senate of the United States from the State of Louisiana for the term of six years, commencing on the 4th day of March, 1877, and that he be admitted thereto upon taking the proper oath. *Resolved*, That Henry M. Spofford is not entitled to a seat in the Senate of the United States." There was a minority report. November 30, the resolutions were agreed to, and Mr. Kellogg took the seat. March 21, 1879, a memorial of Mr. Spofford was presented, praying for an investigation into his claim to a seat, which was referred to a committee. May 7, the Senate resolved that the committee be authorized to make a full investigation into the subject. March 22, 1880, the committee reported that the evidence taken showed that the Packard legislature was, in fact as well as in law, not a legislature, but a body of men assembled by fraud, held together by force, and controlled by bribery, with the aid and in the interest of the sitting member. The committee reported the testimony taken and recommended the adoption of resolutions that Mr. Kellogg was not entitled to the seat in the Senate, and that Mr. Spofford was chosen by the legislature, and that he be admitted to the seat. A minority report claimed that the resolutions of November 30, 1877, were binding as final decisions by the Senate; that a change in the party majority in the Senate was the only change that had taken place since Mr. Kellogg took his seat in pursuance of a resolution of November 30, 1877. The resolutions reported by the committee were debated, but no further action was taken by the Senate. December 7, 1880, credentials of Thomas C. Manning, appointed by the governor in place of Mr. Spofford, who died August 20, 1880, were presented and referred to the committee. No further action was taken on the credentials. Compensation from March 4, 1877, to August 20, 1880, were allowed to the representatives of the estate of Mr. Spofford. The expenses incurred by Messrs. Kellogg and Manning were reimbursed.

The history of the cases here given consists of a transcript of the proceedings of the Senate relating to them from Senate Journals, 3d sess. 42d Cong. to 1st sess. 47th Cong., and the reports of the committee (except the testimony).

Special references to the debates of each day are inserted below, and references to the reports are given in foot-notes.

RAY vs. McMILLEN.

Contest for seat for unexpired term ending March 3, 1873.

WEDNESDAY, *January* 22, 1873.

Mr. West presented the credentials of W. L. McMillen, elected a Senator by the legislature of Lonisiana to fill the vacancy occasioned by the resignation of William Pitt Kellogg; which were referred to the Committee on Privileges and Elections. Mr. West presented the credentials of John Ray, elected a Senator by the legislature of Louisiana to fill the vacancy occasioned by the resignation of William Pitt Kellogg; which were referred to the Committee on Privileges and Elections.

THURSDAY, *February* 20, 1873.

Mr. Carpenter, from the Committee on Privileges and Elections, who were directed by a resolution* of the Senate of January 16, 1873, to "inquire and report to the Senate whether there is an existing legal State government in Louisiana, and how and by whom it is constituted," and to whom were referred the credentials of W. L. McMillen and John Ray, claiming seats in the Senate in the place of W. P. Kellogg, resigned, submitted a report (No. 457), accompanied by a bill† (S. 1621) to establish a government in the State of Louisiana, republican in form; which was read and passed to a second reading.

Mr. Morton, Mr. Hill, and Mr. Trumbull, members of the Committee on Privileges and Elections, each submitted views dissenting from the conclusions arrived at by the committee, which were ordered to be printed to accompany the report (No. 457).

REPORT OF COMMITTEE.‡

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1873.—Ordered to be printed.

Mr. Carpenter submitted the following report to accompany bill S. 1621:

The Committee on Privileges and Elections, to whom was referred Senate resolution of January 16, 1873, as follows:

"*Resolved*, That the Committee on Privileges and Elections be instructed to inquire

* The resolution here given is the one on which this report was made. The one given by an error in the Senate Journal (resolution of January 7, 1873) was reported February 10 (No. 417).

† For copy of bill see Congressional Globe, part 3, 3d sess. 42d Cong., pages 1850, 1851.

‡ From Senate Reports, 3d sess. 42d Cong., No. 457. The accompanying testimony is here omitted.

and report to the Senate whether there is any existing State government in Louisiana and how and by whom it is constituted,"

And to which committee were also referred the credentials of John Ray and W. L. McMillen, both claiming the seat supposed to have been made vacant by the resignation of William Pitt Kellogg, a Senator of the United States from the State of Louisiana, respectfully submit the following report:

Your committee have devoted weeks to the investigation of the subjects referred to them, and have taken much record and oral testimony, which accompanies this report.

On the 15th of January, 1873, John McEnery certifies, under what purports to be the great seal of the State of Louisiana, that he is governor of said State; and that on the 14th day of January, 1873, W. L. McMillen was by the legislature of said State duly elected a Senator of the United States to fill the unexpired term of Hon. William Pitt Kellogg. On the same day, January 15, 1873, William Pitt Kellogg certifies, under what purports to be the great seal of said State, that he is the governor of said State, and that John Ray was duly elected by the legislature of said State on the 15th day of January, 1873, to fill said unexpired term of said Kellogg in the Senate of the United States.

The certificate of said John McEnery is countersigned by Y. A. Woodward, assistant secretary of state; and the certificate of said Kellogg is countersigned by P. G. Deslondes, secretary of state.

The Senate must therefore determine whether either McMillen or Ray, and, if either, which, is entitled to said seat.

The extraordinary fact that two men are claiming to be the governor of said State, and that two men are certified under the great seal of the State to have been elected to one and the same seat in the Senate, and the resolution of the Senate requiring your committee to inquire and report whether there is any existing State government in Louisiana and how and by whom it is constituted, have compelled your committee to inquire fully into the condition of things in that State; and the conclusions to which your committee have arrived are now to be stated:

On the 4th day of November last, Henry C. Warmoth was governor of said State, having been elected in 1868. On that day a general election for governor and other State officers, and one-half of the senate and all the members of the house of representatives of said State, ought to have been holden.

The constitution of said State, art. 46, provides as follows:

"Returns of all elections for members of the general assembly shall be made to the secretary of state."

The constitution, Title III, executive department, art. 48, provides as follows:

"The supreme executive power of the State shall be vested in a chief magistrate, who shall be styled the governor of the State of Louisiana. He shall hold his office during the term of four years, and, together with the lieutenant-governor elected for the same term, be elected as follows: The qualified electors for representatives shall vote for governor and lieutenant-governor at the time and place for voting for representatives; the returns of every election shall be sealed up and transmitted by the proper returning officer to the secretary of state, who shall deliver them to the speaker of the house of representatives on the second day of the session of the general assembly then to be holden. The members of the general assembly shall meet in the house of representatives to examine and count the votes. The person having the greatest number of votes for governor shall be declared duly elected; but in case of a tie-vote between two or more candidates, one of them shall be immediately chosen governor by joint vote of the members of the general assembly. The person having the greatest number of votes polled for lieutenant-governor shall be lieutenant-governor; but in case of a tie-vote between two or more candidates one of them shall be immediately chosen lieutenant-governor by joint vote of the members of the general assembly."

Article 60 provides as follows:

"He (the governor) shall nominate and, by and with the advice and consent of the senate, appoint all officers whose offices are established by the constitution, and whose appointments are not herein otherwise provided for: *Provided, however*, That the general assembly shall have a right to prescribe the mode of appointment to all other offices established by law."

These are provisions of the constitution with which the reconstructed State of Louisiana was admitted into the Union.

On the 16th of March, 1870, the legislature of that State pretended to pass a law regulating elections, which among other things provided as follows:

"SEC. 29. *Be it further enacted, &c.*, That in any parish, precinct, ward, city, or town, in which during the time of registration or revision of registration or on any day of election, there shall be any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any place within said parish, or at or near any poll

or voting place, or place of registration or revision of registration, which riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioner of election, if such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences occur on the day of election, or of the supervisor of registration, or any assistant supervisor of registration of the parish, if they occur during the time of registration or revision of registration, to make in duplicate and under oath a clear and full statement of all the facts relating thereto, and of the effect produced by such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, in preventing a fair, free, peaceable, and full registration or election, and of the number of qualified electors deterred by such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, from registering or voting, which statement shall also be corroborated under oath by three respectable citizens, qualified electors of the parish.

"When such statement is made by a commissioner of election or assistant supervisor of registration he shall forward both copies to the supervisor of registration immediately on the close of the election. The supervisor of registration shall forward one copy of all such statements, whether made by himself or a commissioner of election or by an assistant supervisor of registration, to the governor, and shall deposit one copy with the clerk of the district court of the parish.

"SEC. 53. *Be it further enacted, &c.*, That immediately upon the close of the polls on the day of election the commissioners of election at each poll or voting place shall seal the ballot-box by pasting slips of paper over the keyhole and the opening in the top thereof, and fastening the same with sealing-wax, on which they shall impress a seal, and they shall write the names of the commissioners on the said slips of paper; they shall forthwith convey the ballot-box so sealed to the office of, and deliver said ballot-box to, the supervisor of registration for the parish, who shall keep his office open for that purpose from the hour of the close of the election until all the votes from the several polls or voting places of the precinct shall have been received and counted. The supervisor of registration shall immediately upon the receipt of said ballot-box note its condition and the state of the seals and fastenings thereof, and shall then, in the presence of the commissioners of election and three citizens, freeholders of the parish for such poll or voting place, open the ballot-box and count the ballots therein, and make a list of all the names of the persons and offices voted for, the number of votes for each person, the number of ballots in the box, and the number of ballots rejected, and the reason therefor. Said statements shall be made in triplicate, and each copy thereof shall be signed and sworn to by the commissioners of election of the poll and by the supervisor of registration. As soon as the supervisor of registration shall have made the statement above provided for, for each poll in his precinct or parish, and it shall have been sworn to and subscribed as above directed, the supervisor of registration shall inclose in an envelope of strong paper or cloth, securely sealed, one copy of such statement from each poll and one copy of the list of persons voting at each poll, and one copy of any statements as to violence or disturbance, bribery or corruption, or other offenses specified in section 29 of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the votes, and shall send such package by mail, properly and plainly addressed, to the governor of the State. The supervisor of registration shall send a second copy of said statement to the governor of the State by the next most safe and speedy mode of conveyance, and shall retain the third copy in his own possession.

"SEC. 54. *Be it further enacted, &c.*, That the governor, the lieutenant-governor, the secretary of state, and John Lynch and T. C. Anderson, or a majority of them, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise by either of the board, then the vacancy shall be filled by the residue of the board of returning officers. The returning officers shall, after each election, before entering upon their duties, take and subscribe to the following oath before a judge of the supreme or any district court:

"'I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election: So help me God.'

"Within ten days after the closing of the election said returning officers shall meet in New Orleans to canvass and compile the statements of votes made by the supervisors of registration, and make returns of the election to the secretary of state. They shall continue in session until such returns have been completed. The governor shall at such meeting open in the presence of the said returning officers the statements of the supervisors of registration, and the said returning officers shall, from said statements, canvass

and compile the returns of the election in duplicate. One copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The returns of the elections thus made and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers until set aside, after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected.

"The governor shall within thirty days thereafter issue commissions to all officers thus declared elected who are required by law to be commissioned.

"SEC. 55. *Be it further enacted, &c.*, That in such canvass and compilation the returning officers shall observe the following order: They shall compile first the statements from all polls or voting places at which there shall have been a fair, free, and peaceable registration and election. Whenever from any poll or voting place there shall be received the statement of any supervisor of registration, assistant supervisor of registration, or commissioner of election, in form as required by section 29 of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences which prevented or tended to prevent a fair, free, and peaceable and full vote of all qualified electors entitled to vote at such poll or voting place, such returning officers shall not canvass, count, or compile the statement of votes from such poll or voting place until the statements from all other polls or voting places shall have been canvassed and compiled. The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting place, and if from the evidence of such statements they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning officers shall canvass and compile the vote of such poll or voting place with those previously canvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If, after such examination, the said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting place, or did prevent a sufficient number of the qualified electors thereat from registering and voting, to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting place, but shall exclude it from their returns. The returning officers may appoint such clerks as may be necessary, for a length of time not to exceed thirty days, who shall be paid $5 per day each for the time actually served, which time shall be specified in a written account, subscribed and sworn to by such clerk, and approved by the returning officers. The auditor of public accounts shall issue his warrant upon the treasury for the amount of such account so subscribed and sworn to and approved.

"SEC 56. *Be it further enacted, &c.*, That it shall be the duty of the secretary of state to transmit to the clerk of the house of representatives and the secretary of the senate of the last general assembly a list of the names of such persons as, according to the returns, shall have been elected to either branch of the general assembly; and it shall be the duty of said clerk and secretary to place the names of the representatives and senators elect, so furnished, upon the roll of the house and of the senate, respectively; and those representatives and senators whose names are so placed by the clerk and secretary, respectively, in accordance with the foregoing provisions, and none other, shall be competent to organize the house of representatives or senate. Nothing in this act shall be construed to conflict with article 34 of the constitution of the State.

"SEC. 57. *Be it further enacted, &c.*, That should any of the returning officers named in this act be a candidate for any office at any election, he shall be disqualified to act as returning officer for that election, and a majority of the remaining returning officers shall summon some respectable citizen to act as returning officer in place of the one so disqualified."

This act is in conflict with the constitution in several particulars. First, the constitution provides that the return of the election of all members of the legislature shall be made to the secretary of state. (See art. 46.) And article 48 provides that the returns of every election for governor and lieutenant-governor shall be sealed up and transmitted to the secretary of state, who shall deliver them to the speaker of the house of representatives then next to be holden, and that the members of the general assembly—that is,

both houses of the legislature—shall meet in the house of representatives to examine and count the votes for governor and lieutenant-governor.

The act provides that the returns shall be made to the governor, and that the governor, the lieutenant-governor, the secretary of state, and John Lynch and T. C. Anderson, or a majority of them, shall be returning officers for all elections in the State; that they shall examine, canvass, and count the votes, and determine who has been elected governor and to other State offices, and who members of the legislature. The act provides for a totally different machinery from that provided by the constitution for the safe-keeping, examination, and count of the votes for governor and lieutenant-governor. The act, in so far as it provides that Lynch and Anderson shall be members of said canvassing board, is in conflict with the provision of the constitution in relation to appointments to office.

Under these provisions of the constitution and laws of the State, a general election was held in the State on the 4th day of November, 1872, for governor and other State officers, and members of the legislature. At this election McEnery and Kellogg were candidates for governor, and Dibble, who was then judge of the eighth district court of New Orleans, and Elmore were candidates for the office of judge of said court.

The election was in fact conducted, and returns thereof made, in pretended pursuance of the election law above quoted from. Governor Warmoth held in his own hands the entire machinery of the election. He appointed the registrars and they appointed the commissioners of election, and the returns from the parishes were made to him, as the law required, and not to the secretary of state, as required by the constitution.

On the 13th of November, 1872, there was a meeting of the returning or canvassing board. Present: Warmoth, governor; Pinchback, lieutenant-governor; Herron, secretary of state, and Lynch, Anderson being absent. At this meeting Governor Warmoth was elected chairman of the board, Lynch was elected secretary, and the board adjourned to November 14, 12 m.

It seems that Governor Warmoth had become satisfied that the board, as constituted, would not do his bidding or execute his schemes, and he resolved to reconstruct it.

This makes it necessary to consider the imbroglio which then existed in regard to the secretary of state. At the election in 1868, at which Warmoth was elected governor, Bovee was elected secretary of state. In August, 1871, upon pretense of some malfeasance by Bovee, Warmoth issued a so-called "executive order," suspending Bovee as secretary of state, and appointing Herron in his place. This "executive order," so far as your committee can ascertain, had no warrant in the constitution or laws of the State, but was an act of usurpation. But Bovee commenced suit against Herron in the eighth district court of New Orleans, under the "intrusion act," and in that court, Emerson, judge, presiding, it was declared that the governor had authority to suspend Bovee; that such suspension created a vacancy in the office, which the governor could fill by commission, to extend until the close of the next session of the legislature. Bovee attempted to appeal from this decision, but the supreme court dimissed the appeal for the reason that it had not been taken in time. This left the decision of the court below in full force, and it has never been set aside or reversed.

The legislature next met in January, 1872, when Governor Warmoth presented to the house of representatives charges against Bovee, and the house appointed a committee to investigate these charges, with a view to his impeachment. This investigation lasted for some time, and, finally, near the close of the session, on the application of Bovee, was continued to the next session of the legislature, upon the condition that Bovee should remain suspended until the next session.

In March, 1872, after the adjournment of the legislature, Bovee brought a second suit against Herron in the eighth district court of New Orleans, and this court decided, Dibble, J., presiding, that Bovee was entitled to the office, upon the ground that, conceding his original removal and the appointment of Herron in his place to have been legal, yet the commission of Herron expired with the session of the legislature next after the removal of Bovee and appointment of Herron. This decison was appealed from to the supreme court, and affirmed about the 2d day of December, 1872.

In the mean time, on the 14th of November, 1872, at 10 a. m., Governor Warmoth had appointed Wharton in place of Herron, who up to that time had been secretary of state *de facto;* and the governor defends this upon two grounds: first, that Herron's commission expired with the adjournment of the legislature, leaving the office vacant, and that by the constitution the governor is authorized to fill all vacancies happening during the vacation of the legislature; and, second, that Herron was a defaulter in a former office, and by a provision in an amendment to the constitution was ineligible to any office while thus in default. Wharton, under his appointment, obtained possession of the the office and held it, performing its duties down to the time when the supreme court—about December 2, 1872—decided, in Bovee's second suit, that he (Bovee) was entitled to the office.

power to enact such laws as are necessary and proper to secure to the colored citizen his right to vote upon the same terms and conditions and with the same effect as the right is enjoyed and exercised by white citizens; and, speaking of the case before us, this is the extent of jurisdiction possessed by the National Government in regard to State elections.

The act of Congress of May 31, 1870 (16 Stat. at Large, 140), provides as follows:

"SECTION 1. That all citizens of the United States who are or shall be otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections without distinction of race, color, or previous condition of servitude, any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

The second section provides for registration under the laws of the State without distinction of race, color, or previous condition of servitude; and section 3 provides that where any act is required by any State law—as registration, for instance—"the offer of any such citizen to perform the act required to be done, as aforesaid, shall, if it fail to be carried into execution by the wrongful act" of the State officer, be deemed and held a performance in law of the act required; and that the person so offering and failing, as aforesaid, shall be entitled to vote in the same manner as if he had in fact performed such act.

Section 23 is as follows:

"That when any person shall be defeated or deprived of his election to any office, except elector of President or Vice-President, Representative or Delegate in Congress, or member of a State legislature, by reason of the denial to any citizen or citizens who shall offer to vote, of the right to vote, on account of race, color, or previous condition of servitude, his right to hold and enjoy such office and the emoluments thereof shall not be impaired by such denial; and such person may bring any appropriate suit or proceeding to recover possession of such office; and in cases where it shall appear that the sole question touching the title to such office arises out of the denial of the right to vote to citizens who so offered to vote, on account of race, color, or previous condition of servitude, such suit or proceeding may be instituted in the circuit or district court of the United States of the circuit or district in which such person resides. And said circuit or district court shall have, concurrently with the State courts, jurisdiction thereof, so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the fifteenth article of amendment to the Constitution of the United States and secured by this act."

This act was amended by the act of February 28, 1871, 16 Stat. L., 433, section 15, providing as follows:

"That the jurisdiction of the circuit court of the United States shall extend to all cases in law or equity arising under the provisions of this act or the act hereby amended; and if any person shall receive any injury to his person or property, for or on account of any act by him done under any of the provisions of this act or the act hereby amended, he shall be entitled to maintain suit for damages therefor in the circuit court of the United States in the district wherein the party doing the injury may reside or shall be found."

These acts were passed to give effect to the provisions of the fifteenth amendment and regulate elections for members of Congress; and, so far as they apply to the election of State officers and members of State legislatures, they are confined to the single purpose of securing to all citizens the right to vote without distinction of race, color, or previous condition of servitude; and an act of Congress attempting to go beyond this would be void for want of authority in Congress to enact it. Therefore, a contest between two citizens of the same State in relation to the office of governor, or other State office, cannot be waged in a Federal court, except upon the ground that the contestant has been defeated or deprived of his election by reason of the denial to any citizen or citizens of the right to vote on account of race, color, or previous condition of servitude. If the contestant has been defeated in consequence of a denial to citizens of the right to vote on account of their belonging to a particular political party, or a particular church, or for any reason, except race, color, or previous condition of servitude, no Federal court has power to hear and determine it.

Keeping this in mind, we come to consider the proceedings in the circuit court of the United States for the district of Louisiana.

On the 16th of November, 1872, Kellogg filed his bill on the equity side of said circuit court against the Warmoth board—Warmoth, Wharton, Hatch, and Da Ponte—and against McEnery, and the New Orleans Republican Printing Company, publishers of the New Orleans Republican, being the official journal of the State, stating that a general election was held on the 4th day of November, 1872, for governor and other State officers; that Kellogg and McEnery were candidates for governor at said election; that

Governor Warmoth had the power by law to appoint registrars; and that prior to the election Warmoth had repeatedly avowed his intention to unlawfully defeat the election of Kellogg, and to that end had appointed persons who would aid him in his purpose; and made it a condition of their appointment that they should so aid him, and that one of his plans was to deprive a large number of citizens of the right to vote, by refusing them registration on account of their race, color, and previous condition; that this plan was carried into execution, so that at least 10,000 voters were on that account deprived of registration; that persons so refused registration applied to vote at the election and were denied; that he (Kellogg) was in possession of evidence of this fact; and that he is informed and believes that from three to five thousand persons who had offered to be registered had been denied the right to vote on account of race and color.

That Warmoth, combining with the officers appointed by him, had caused a dishonest and false count of votes cast at said election, and had falsified and caused false returns of the election to be made; that a number of ballots of citizens of color, sufficient to have elected him, had not been counted.

That when the canvassing board met, November 14, 1872, Longstreet and Hawkins were elected by the board to fill the vacancies of Pinchback and Anderson; that Warmoth, being in possession of returns, refused to open and present the same to said board; that Warmoth, without authority, had pretended to eject Herron from the office of secretary of state, and had attempted with force and arms to take possession of the records and archives of that office, and had unlawfully pretended to appoint Wharton secretary of state; and that Wharton pretended to be a member of the board, and that Warmoth and Wharton had pretended to elect Hatch and Da Ponte to fill the vacancies of Pinchback and Anderson, and that Warmoth had unlawfully opened and submitted the returns to this illegal board, and that it was the intention of the board to make a false canvass and declare McEnery elected; that although the canvass by such unlawful board would be void, yet their determination would embarrass him in legal proceedings to obtain said office; and that it was the intention of Warmoth and his board to destroy the returns; and the intention of McEnery and the Warmoth board to have it declared and published in the official paper that he (McEnery) was elected.

That Warmoth had totally disregarded the law in regard to said election; that he had done everything in his power to defeat the will of the people; that he intended to destroy the returns and all evidences of the election, so as to render it impossible for him (Kellogg) ever to establish his right to the office.

The bill prayed an injunction against Warmoth, restraining him from canvassing the returns except in presence of the Lynch board, and commanding him not to deliver the returns to the Warmoth board, and restraining the Warmoth board from acting or making any return or certificate in regard to said election; and restraining McEnery from pretending to act as governor, or asserting any claim to the office, by virtue of any certificate or canvass then made, or thereafter to be made, by the Warmoth board; and restraining the publishers of the official newspaper from publishing any canvass made by the Warmoth board.

The prayer for the relief is as follows:

"And it may also please your honors to order and adjudge that the said defendant, H. C. Warmoth, within a period of time to be fixed by your honors, do make and deposit in this honorable court, in the office of the clerk thereof, full, true, and exact sworn copies of each and every paper, document, affidavit, tally-sheet, list, sworn statement, or certificate or letter which he may have received or may have come into his possession from any commissioner or commissioners, or any officer concerned in the control or management of said election, or who had any duties to perform in connection therewith, and from all supervisors or assistant supervisors of election, in any manner relating to said election, in order that the same may be beyond the power of destruction by the said defendant Warmoth and his said confederates, and in order that the same may be saved to your orator as evidence to enable him to establish his right to the office of governor as aforesaid in any judicial proceedings which he may be compelled to institute in this court to establish and vindicate the same.

"And that the same may be also preserved for use or proof in support of your orator's bill in this behalf, and to establish his right to the relief by him herein and hereby prayed for, and that the said evidence, documents, &c., to be produced remain on file in this court in order that the same may be preserved as evidence in any action which your orator may be required to institute in this court to establish his said right to said office."

The bill also contained prayer for process and for general relief.

It is at least questionable whether this bill on its face presented a case within the jurisdiction of the Federal court. Although it is alleged in the former part of the bill that about ten thousand persons had been denied registration on account of race and color, and that from three to five thousand of those thus deprived of registration were denied the right to vote, yet this wrong was completed at the time the bill was filed, and

it was not in the power of the court to undo it. In the subsequent part of the bill the pleader appears to ignore the fact of race, color, or previous condition of servitude as an element of jurisdiction.

Again, it can hardly be claimed that Kellogg had been deprived of his office of governor at the time the bill was filed. The bill states, indeed, Kellogg's apprehension that this board would declare McEnery elected, and that such declaration would embarrass him in the enforcement of his legal right to the office.

On the other hand, it may reasonably be claimed that if Warmoth should destroy the returns it would be out of Kellogg's power to establish the fact that he had been defeated because citizens had not been allowed to vote on account of race and color.

Conceding, however, that the bill did present a case within the jurisdiction of the court, that jurisdiction was limited by the scope of the bill, and gave no warrant to the extraordinary proceedings which were subsequently had in the case. The only legitimate purpose of this bill was to preserve testimony, and the subsequent attempt of the court, on a bill in equity, to determine the title of Warmoth, Wharton, and others to act as State canvassers was a matter wholly beyond the jurisdiction of Federal courts. The bill shows that Warmoth, Wharton, Hatch, and Da Ponte claimed to be members of the board, and were acting as such; and alleges that they were not members of the board, but that Lynch, Herron, Longstreet, Hawkins, and Warmoth were the legal members of said board. What jurisdiction had the Federal court to determine the right between these contending boards? They were State officers, and it is not alleged in the bill that any colored man was deprived of any right which had resulted in the election of Hatch and Da Ponte. Besides, the question of right to this office was entirely collateral in the proceedings. Wharton and Longstreet might have contested their respective rights in the State courts under the "intrusion act" of that State, which corresponds to proceedings by *quo warranto* at the common law. But it was never before pretended that such a question could be settled by suit in equity.

The utmost which the court had authority to do upon this bill was to restrain the destruction of the returns and documents, to preserve which the bill was filed. They were State records, and the Federal court had no right to take possession of them. The bill did not ask the court to do so, but only to require copies to be filed. But the court issued the following restraining order:

"United States of America, circuit court of the United States, fifth circuit and district of Louisiana, November term, A. D. 1872.

"NEW ORLEANS, *Saturday, November* 16, 1872.

"Court met pursuant to adjournment. Present, the Hon. E. H. Durell, district judge.

"WILLIAM P. KELLOGG *vs.* "H. C. WARMOTH ET AL. } No. 6830.

"On motion of J. R. Beckwith, counsel and solicitor for complainant, it is ordered that H. C. Warmoth, Jack Wharton, Frank H. Hatch, Durant Da Ponte, John McEnery, and the New Orleans Republican Printing Company, publishers of the New Orleans Republican, a newspaper, being the official journal of the State of Louisiana, be enjoined and restrained from in any manner, either directly or indirectly, pretending to consider or canvass any certificate, statement, or return of any supervisor of registration, except in the presence of the legal returning officers named in the bill of complaint filed this day, to wit, John Lynch, Jacob Hawkins, James Longstreet, and Francis J. Herron; and it is further ordered that the said H. C. Warmoth desist and refrain from submitting to the defendants, Jack Wharton, Frank H. Hatch, and Durant Da Ponte, or any or either of them, either as pretended members of any board of returning officers of elections of the State of Louisiana, or as individuals, any statements, certificates of returns, or pretended statements, certificates, or returns of election, and to desist from assisting, aiding, abetting, or permitting any other person or persons whatsoever other than John Lynch, Jacob Hawkins, James Longstreet, and Francis J. Herron, or their duly qualified successors, as returning officers, to inspect, consider, or have custody of or access to said statements, certificates, or returns of said supervisors of registration, or any other paper, document, affidavit, or proof that may have come into the hands of said Warmoth, or shall hereafter come into his hand, relating to said election, or to the fairness or correctness thereof, and which by law it is his duty to submit to the said John Lynch, Jacob Hawkins, James Longstreet, and Francis J. Herron, the said legal board of returning officers of elections, and which should be properly considered by them.

"And it is further ordered that the said H. C. Warmoth, Jack Wharton, Frank H.

Hatch, and Durant Da Ponte, and each of them, be commanded and enjoined to refrain and desist from pretending to act together as a board of returning officers, or as returning officers of elections, from canvassing or attempting to canvass or consider any certificate, document, affidavit, return, statement of votes, or any paper whatsoever properly relating to said election mentioned in the said bill of complaint, and from attempting to make a canvass, to make, declare, or publish any pretended deduction, calculation, statement, or proclamation based thereon, or pretended to be derived therefrom, in any way relating or pertaining to said election mentioned in the said bill of complaint, held on the 4th day of November, 1872, or certifying to any candidate for office at said election any certificate of election, or any statement of the result of said election tending to show any right to office in any person growing out of ballots cast at said election, and from meddling with, altering, suppressing, falsifying, obliterating, or destroying any document, paper, voucher, proof, statement of votes, or certificate relating to said election. And it is further ordered that the said John McEnery be commanded, enjoined, restrained, and inhibited from in any manner acting or pretending to act as governor of the State of Louisiana, and from making any pretensions or asserting any claim to the office of governor of said State by virtue of any pretended evidence of election thereto under or by virtue of any certificate, document, or count, canvass, or adjudication now or hereafter made by the said defendant, H. C. Warmoth, and the said defendants, Jack Wharton, Frank H. Hatch, Durant Da Ponte, in this bill charged to be unlawfully combined and conspired as returning officers. And it is further ordered that the said New Orleans Republican Printing Company, under whose control and direction the newspaper called the New Orleans Republican, the official journal of the State of Louisiana, is published, whereof W. R. Fish is president, be enjoined and restrained from in any manner publishing any official notice, document, or statement relating to any canvass or statement of votes made, or pretended to be made, or in any manner emanating from the said H. C. Warmoth, and said Jack Wharton, Frank H. Hatch, Durant Da Ponte, or either of them, as a pretended board of returning officers of elections, in any manner relating to the said election held on the 4th day of November, A. D. 1872.

"And it is further ordered that the said defendants, H. C. Warmoth, Jack Wharton, Frank H. Hatch, Durant Da Ponte, John McEnery, and the New Orleans Republican Printing Company, named in the bill of complaint this day filed, be so commanded, enjoined, and restrained until the further order of this honorable court."

And this order was duly served by the marshal on the 17th of November, 1872.

On the 19th of November, 1872, Kellogg filed an affidavit, as follows:

"William P. Kellogg, being first duly sworn, deposeth and saith that he is advised and informed, and thereby believes, that the said defendants, H. C. Warmoth, Durant Da Ponte, Jack Wharton, and Frank H. Hatch, are now, and at all times since the making and service of the restraining order, issued in this cause, have been acting in disregard and in disobedience thereof, in contempt of the lawful orders of this court, and have aided, abetted, and countenanced the continued possession, custody, and canvass of the returns, certificates of officers connected with said elections, by persons other than the said Lynch, Longstreet, Herron, and Hawkins, and have in other material respects disobeyed the orders of this honorable court.

"WM. P. KELLOGG.

"Sworn to and subscribed before me this 19th November, 1872.

"J. W. GURLEY,
"*United States Commissioner.*"

A rule was granted against Warmoth and others to show cause, upon which interrogatories and answers were filed, and this matter was slowly progressing when Governor Warmoth, to escape the clutches of Judge Durell, approved the act of November 20, 1872, which act repealed all the laws before then in force in regard to canvassing boards, and of course legislated both the Warmoth and Lynch boards out of existence. After this it is difficult to see what was left of the case made by Kellogg's bill in the United States court. Warmoth exercised the legislative power of the State, took the whole subject away from the United States court, and, on the evening of December 3, appointed De Feriet, Wiltz, Isabelle, Austin, and Taylor a canvassing board under the act of November 20, and at the same time, as governor, commenced suit in the eighth district court before Judge Elmore, and obtained an injunction restraining the Lynch board, upon the ground that the act of November 20 had abolished that board. The Lynch board applied to the Federal court for a certiorari to remove this suit of Warmoth against the Lynch board into the Federal court. The State court treated the writ with contempt and made no return to it. No proceedings were had in the Federal court on the certiorari, nor was any motion made in that court to dissolve the injunction which had been granted against the Lynch board. Conceding the right of the Federal court to issue this writ of certi-

orari, its effect, when served upon the State court, was to transfer the cause to the Federal court; and the Lynch board might have applied to the Federal court to compel a return, and for a dissolution of the injunction granted by the State court. But as no such application was made to the Federal court, the injunction granted by the State court remains in full force against the Lynch board.

Warmoth having thus become master of the situation, having by the act approved November 20 legislated all former boards out of existence, and obtained an injunction against the Lynch board, restraining them upon the ground that their offices had been abolished, ordered the De Feriet board to the front; and that board, on the 4th day of December, made their canvass, declaring McEnery elected governor, Penn lieutenant-governor, Graham auditor, Armistead secretary of state, Ogden attorney-general, and Lusher superintendent of education; and declaring, also, who had been elected members of the legislature; and on the same day Governor Warmoth issued his proclamation promulgating this result, and therewith published the certificate of Wharton, secretary of state, containing the list of members of the legislature, to the secretary of the senate and clerk of the house of representatives, as required by law; being those declared by the De Feriet board to have been elected at said November election. (See pages 303, 304 of testimony attached to this report.)

The governor undoubtedly congratulated himself at this point that he had secured a complete victory over Judge Durell; but, unfortunately for the governor's joy, Judge Durell took a very different view of the situation; and, out of court, at his house, late at night, December 5, without application by any party, made the following order, which is without parallel, and it is hoped will remain so, in judicial proceedings:

"Circuit court of the United States, fifth circuit and district of Louisiana, in equity.

"WILLIAM P. KELLOGG *vs.* "H. C. WARMOTH ET AL. } No. 6830.

"Whereas Henry C. Warmoth, one of the respondents herein, has, in violation of the restraining order herein, issued the following proclamation and returns of certain persons claiming to be a board of returning officers, all in violation and contempt of the said restraining order, as follows, viz:

"'*Proclamation.*

"'STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
"'*New Orleans, December* 4, 1872.

"'Whereas P. S. Wiltz, Gabriel De Feriet, Thomas Isabelle, J. A. Taylor, and J. E. Austin, returning officers appointed by the governor to fill vacancies existing, in accordance with the constitution and laws of the State of Louisiana, have made declaration of the result of an election held November 4, 1872, and have declared certain persons elected to the senate and house of representatives of the State of Louisiana, as will appear from the returns herewith attached and made a part of this proclamation; and

"'Whereas such returns are compiled from the official returns of commissioners of election and supervisors of registration, on file in this office, and are in fact and in form accurate and correct, and made in accordance with law:

"'Now, therefore, I, Henry Clay Warmoth, governor of the State of Louisiana, do issue this my proclamation, making known the result of said election aforesaid, and command all officers and persons within the State of Louisiana to take notice of and respect the same.

"'Given under my hand and the seal of the State this 4th day of December, A. D. 1872, and of the independence of the United States the ninety-seventh.

"'H. C. WARMOTH.

"'By the governor:

"'Y. A. WOODWARD,
"'*Assistant Secretary of State.*'

"Now, therefore, in order to prevent the further obstruction of the proceedings in this cause, and, further, to prevent a violation of the orders of this court, to the imminent danger of disturbing the public peace, it is hereby ordered that the marshal of the United States for the district of Louisiana shall forthwith take possession of the building known as the Mechanics' Institute, and occupied as the State-house for the assembling of the legislature therein, in the city of New Orleans, and hold the same subject to the further order of this court, and meanwhile to prevent all unlawful assemblage therein under *the guise or* pretext of authority claimed by virtue of pretended canvass and returns

made by said pretended returning officers in contempt and violation of said restraining order; but the marshal is directed to allow the ingress and egress to and from the public offices in said building of persons entitled to the same.

"E. H. DURELL."

It is impossible to conceive of a more irregular, illegal, and in every way inexcusable act on the part of a judge. . Conceding the power of the court to make such an order, the judge, out of court, had no more authority to make it than had the marshal. It has not even the form of judicial process. It was not sealed, nor was it signed by the clerk, and had no more legal effect than an order issued by any private citizen.

There had been no amendment of the bill of complaint. The law of November 20 had been promulgated. The De Feriet board had been appointed in pretended pursuance thereof. Whether under the constitution the governor had the power, in the vacation of the legislature, to appoint that board, upon the ground that the act of November 20 created offices, and therefore vacancies in office, your committee do not inquire. But it is understood that the constitution has been so construed in that State, and that Judge Dibble was appointed by the governor under similar circumstances.

The De Feriet board, therefore, had color of official existence. Their canvass was completed, and the result promulgated under color of the State law, and it is clear that this gave the Federal court no more right to seize the State-house than to seize this Capitol.

The marshal, on receiving this pretended order, called for a detachment of United States troops to act as a posse comitatus, seized the State-house at 2 a. m. of December 6, and held it for weeks.

Afterward, on the same day, Judge Durell delivered an opinion in the Kellogg case on the application for injunctions *pendente lite*, and made an order granting the injunction as prayed for by the bill. As matter of justice to Judge Durell, we give his opinion, order, and injunction in full:

"United States circuit court, in equity.

"WILLIAM PITT KELLOGG
vs.
"HENRY C. WARMOTH ET AL. } No. 6830.

"Filed December 6, 1872.

"*Opinion of the court.*

"This application comes before me under a bill to preserve evidence to enable the complainant to prosecute a suit at law. This bill is well known to courts of chancery, and is founded upon the statute, being chapter 104 of the second session of the Forty-first Congress, sixteenth Statutes at Large, page 140, entitled 'An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes,' and upon the amendment to the same, being chapter 99 of the third session of the same Congress, sixteenth Statutes at Large, page 433. Section 1 of the first act cited provides as follows:

"'That all citizens of the United States who are or shall be otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections without distinction of race, color, or previous condition of servitude, any constitution, law, custom, usage, or regulation of any State or Territory by or under its authority to the contrary notwithstanding.'

"Section 3 of the same act provides:

"'That whenever, by or under the authority of laws of any State, or the laws of any Territory, any act is or shall be required to be done by any citizen as a prerequisite to qualify or entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer charged with the duty of receiving or permitting such performance or offer to perform, or acting therein, be deemed and held as a performance in law of such act. And the persón so offering and failing, as aforesaid, being otherwise qualified, shall be entitled to vote in the same manner and in the same extent as if he had in fact performed such act.'

"Section 23 provides as follows:

"'That whenever any person shall be defeated or deprived of his election to any office except elector or President or Vice-President, Representative or Delegate in Congress, or member of a State legislature, by reason of the denial to any citizen or citizens who shall offer to vote, of the right to vote, on account of race, color, or previous condition of servi-

tude, his right to hold and enjoy any such office and the emoluments thereof shall not be impaired by such denial.'

"And section 15 of the amending act provides as follows:

"'That the jurisdiction of the circuit court of the United States shall extend to all cases in law or equity arising under the provisions of this act, or the act hereby amended, and if any person shall receive any injury to his person or property for or on account of any act by him done, under any of the provisions of this act or the act hereby amended, he shall be entitled to maintain a suit for damages thereof in the circuit court of the United States in the district wherein the party doing the injury may reside or shall be found.'

"These two acts were passed by Congress to enforce the provision of the Constitution of the United States known as the fifteenth amendment (16 Statutes at Large, pages 140 and 433), which reads as follows:

"'The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

"'SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.'

"The whole matter involved in the discussion, which has occupied more than a week before me, has been presented on both sides with such ability, research, and fullness that I feel greatly indebted to the solicitors of both the complainant and the respondents for the aid which they have rendered in enabling me to come to an early decision.

"The first question to be solved is, are the acts referred to constitutional? Do they fall within the appropriate legislation authorized and imposed as a duty upon Congress by the second section of the amendment? To solve this question we must look to the object proposed to be attained by the amendment. It was to protect all citizens of the United States, including the recently emancipated and enfranchised colored citizens, in the full and free exercise of the right to vote. Nine years previous to the adoption of the amendment, and the enactment of the statutes passed to enforce the same, four millions of those who now constitute the great body of the citizens of the United States were slaves. It is not necessary here to repeat the history of slavery in this country; how it was and continued to be from the very foundation of our Government a source of internal disquiet, increasing year by year until it culminated in a most bitter and devastating civil war. The result of that war was the emancipation and enfranchisement of four millions of people, who thus passed rapidly from a state of bondage to the possession of all the civil and political rights of citizens of the United States. It was impossible that so large a body of people should be suffered to remain exposed to the assaults of the prejudice naturally growing out of their former condition without securing to them through Congressional legislation a free and perfect use of the vote which the fifteenth amendment gave to them as a shield and a sword of protection for their persons, their liberties, and their property.

"Congress has legislated and given us the acts referred to as the means most appropriate for effecting the object proposed. These acts have been highly eulogized by the solicitors on both sides, and they seem to me to be most wise and in the highest sense appropriate. It is to be remarked that the fifteenth amendment is most broad in its comprehensiveness. Though called into existence in order to protect the freedman, it protects as well all other citizens, both native and foreign. It would protect the foreigner who had become a citizen should another Know-Nothing excitement agitate the nation, and it would protect the native-born should the foreign-born citizen ever gain in any State or locality an ascendency and attempt to use that ascendency oppressively. The same may be said of the acts of Congress to give practical effect to the amendment. The provision of the Constitution that no State shall pass a law impairing the obligations of contracts needed no legislation to enforce it beyond giving the right of review in the Supreme Court of the United States to the party feeling himself aggrieved; but in the case of the fifteenth amendment the helplessness of the party to be protected rendered a larger and peculiar jurisdiction necessary.

"Congress, then, in the acts under consideration, threw around all classes of citizens these effective laws and secured obedience thereto—first, by criminal punishment; second, by clothing the candidate of the voter with the right to prevent or redress the wrong attempted or perpetrated upon the vote by an appropriate civil action. Now, what are the grievances set forth in this case? What are the allegations made in the bill? They are that 10,000 citizens of this State have been on account of race, color, and previous condition deprived of registration, and after due proffer of the right to vote; and that that 10,000 votes which were in fact cast for the complainant for the office of governor have been or are about to be suppressed by an illegally constituted board of returning officers; and that without the interference of this court these votes, both those refused and those cast, which ought to be counted for the complainant, will be lost to him, and that thereby he will be defeated for said office.

"The allegations are supported by upward of four thousand affidavits of the actual voters. The chief defendant, namely, H. C. Warmoth, meets this weight of testimony solely by his answer and affidavit; and certain acts done by him since the canvass commenced force upon my mind the belief that his defense rests upon no solid foundation. The further allegation is made that the board of canvassers legally constituted are deprived by this respondent of the proper returns with the view to deprive the citizens of the right to vote. In other words, that the respondent has prevented a fair canvass of the votes by impeding the legal board and setting up an illegal board. This leads me to consider the facts with reference to these two boards.

"By an act of the State legislature of March 16, 1870, the board of returning officers was made to consist of the governor, lieutenant-governor, secretary of state, Mr. Lynch, and Mr. Anderson. The lieutenant-governor and Mr. Anderson being disqualified on account of having been candidates, the governor, Lynch, and Herron, as a majority of the board, met to fill vacancies. The governor attempted to remove Herron, who was certainly *de facto* secretary of state, who seems to have some sort of judgment in his favor against Bovee, the elected secretary of state, who has for a long period attested all the statutes of the State, and who, without going into his title to the office as against Bovee, was the *de facto* officer clothed with sufficient authority to act as one of the board. The attempt to remove Herron I dismiss with the remark that if all the governor alleges against him had been true, it could have been established only by judicial inquiry, and gave the governor no right to displace him. Herron and Lynch by a majority vote filled the vacancies by electing Hawkins and General Longstreet, and these four, together with the governor, are clearly the legal board of returning officers. Wharton's vote goes for nothing, as he never had any legal status in the board, and with him necessarily fall out Da Ponte and Hatch. Thus it appears that the board which we will call the Herron board, in contradistinction to the Wharton board, is the board which this court feels bound to recognize as having been the legal board at the time this suit was commenced. And this brings me to inquire as to the effect of the approval by the governor of the act of November 20, 1872. The only question before me at this stage of the case connected with the effect of that approval is, did it change in any way the legal status of the Herron board? The act contained a repealing clause, and since it covered the whole subject of the election, and the election cannot be said to be complete until the final counting is concluded, I was at first startled by what seemed to me to be the logical inference of some of the authorities cited by the learned solicitors of the respondents, that if the act of 1870 was at that time repealed it might vitiate the whole election. But it is not necessary for me to pass upon the question, for giving the act of November 20 all the force of law, still the Herron returning board must continue to discharge their duties until their successors are inducted into office. Article 122 of the State constitution of 1868 reads thus:

"'ART. 122. All officers shall continue to discharge the duties of their offices until their successors shall have been inducted into office, except in cases of impeachment or suspension.'

"Indeed, the Herron board must finish the canvass of the votes, or a new legislature cannot be legally organized so as to create a board of canvassers in accordance with sections 2 and 44 of the law of the 20th of November, 1872.

"'SEC. 2. *Be it further enacted, &c.*, That five persons, to be elected by the senate from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers. The returning officers shall, after each election, before entering on their duties, take and subscribe to the following oath before a judge of the supreme or any district court:

"'I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election: So help me God.'

"'Within ten days after the closing of the election said returning officers shall meet in New Orleans to canvass and compile the statement of votes made by the commissioners of election, and make returns of the election to the secretary of state. They shall continue in session until such returns have been compiled. The presiding officer shall at such meeting open, in the presence of the said returning officers, the statement of the commissioners of election, and the said returning officers shall, from said statements, canvass and compile the returns of the election in duplicate; one copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The return of the election thus made and promulgated shall be *prima facie*

evidence in all courts of justice and before all civil officers until set aside after a contest, according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned.

"'SEC. 44. *Be it further enacted, &c.*, That it shall be the duty of the secretary of state to transmit to the clerk of the house of representatives and the secretary of the senate of the last general assembly a list of the names of such persons as, according to the returns, shall have been elected to either branch of the general assembly; and it shall be the duty of the said clerk and secretary to place the names of the representatives and senators elect so furnished upon the roll of the house and of the senate, respectively; and those representatives and senators whose names are so placed by the clerk and secretary, respectively in accordance with the foregoing provisions, and none other, shall be competent to organize the house of representatives or senate. Nothing in this act shall be construed to conflict with article 34 of the constitution of the State.'

"I see, therefore, no way of avoiding the conclusion that, in any view of the case, the Herron board of returning officers are still authorized to continue their duties, and are still entitled to the protection of the court.

"The court keeps within the acts of Congress and the fifteenth amendment. It does not pretend in any way to make a governor of the State, or in any degree to interfere with the voice of the people expressed through the ballot-box. What it does is to aid in making known the voice of the people, in accordance with sections 3 and 23 of the act of Congress, and with section 15 of the amendment thereto, and in its action is only a clearly needed adjunct of the legal returning board. Many propositions were discussed during the argument which it is not necessary for me to now pass upon. It is enough that I find the statute constitution; that the court has jurisdiction, and that the board of returning officers, composed of H. C. Warmoth and Messrs. Hawkins, Lynch, Longstreet, and Herron, are the legal board, and as such entitled to the protection of this court.

"As to the question of the ineligibility of the complainant in the bill to the office of governor, this question cannot arise under the bill, and could only come before this court in a direct action at law to test the title to the office. It is not, therefore, necessary or proper for me to decide it now; but were it otherwise, I would say that the reason of the thing seems to favor his eligibility, the object of the provision of the constitution being to prevent a man serving two masters and having a divided allegiance. And the fact that, contemporaneously with the adoption of the constitution which first contained this provision, the then Territorial governor was by the then constitutional convention made governor of the State provisionally, and at the ensuing election made by the people the first governor of the State, would seem to indicate that the meaning of the inhibition was understood to be as I above stated.

"It only remains for me now to make the following order:

"Circuit court of the United States, district of Louisiana, in equity.

"WILLIAM PITT KELLOGG, COMPLAINANT, *vs.* "HENRY C. WARMOTH, JACK WHARTON, FRANK H. Hatch, Durant Da Ponte, and John McEnery, and the New Orleans Republican Printing Company, defendants.	No. 6830.—Order entered December 6, 1872.

"This cause having come on for hearing on the complainant's motion for writs of injunction *pendente lite*, and for other interlocutory orders prayed for in complainant's bill and amended bill of complaint, and the court having considered the pleadings, affidavits, and exhibits filed in the cause, and having heard counsel as well for the complainant as for said defendants, and the court having considered the premises,

"It is ordered—

"That the said defendant, Henry C. Warmoth, during the pendency of this cause, be, and he hereby is, until the further order of this court, enjoined, inhibited, and restrained from in any manner, either directly or indirectly, considering, or pretending to consider or canvass, any statement, certificate, or return of any supervisor or assistant supervisor of registration, or any office, having any duties to perform about or concerning an election held on the 4th day of November, A. D. 1872, in the State of Louisiana, or relating to any votes or ballots cast at said election, except in the presence of John Lynch, Jacob Hawkins, James Longstreet, and George E. Bovee, a board of returning officers for said election; and that he do further desist and refrain from submitting, or allowing to be submitted, or from aiding or assisting in the submission to the defendants, Frank Hatch, Jack Wharton, Durant Da Ponte, or any other person or persons whatsoever, other than the said Hawkins, Bovee, Lynch, and Longstreet, any paper, document, affidavit, statement of votes, return of officers of election, or other proof in any manner

ting to said election, and from allowing any other person or persons whatsoever, other n those in this order excepted, whether pretending to act as returning officers, or in other capacity, to inspect, consider, have access to, canvass, or tamper with any paper, ument, affidavit, statement of votes, returns or written proof relating to said election to the fairness and correctness thereof, that may have heretofore or may hereafter come o his hands or possession, and which, by law, should properly be laid before, submit- to, or considered by such returning officers of election in making a canvass thereof. d that the said defendant, H. C. Warmoth, be further enjoined and inhibited from ering, suppressing, mutilating, destroying, or secreting any such document, proof, or per. And that he further desist and be enjoined from in any manner interfering with, structing, or hindering the said Lynch, Longstreet, Bovee, and Hawkins, or either of em, from full and complete access to, as well as custody of, all such documents, papers, d proofs relating to said election, as he may or shall have in his possession, custody, or ntrol, or as they shall or may demand, either by refusing to deliver such documents or oofs to them, or either of them, or by any suit or proceeding instituted with the intent to nder, delay, or obstruct them in the performance of their duty as returning officers. And at he be further restrained and enjoined from issuing commissions to any persons based on any calculation, deduction, or pretended canvass of ballots cast at said election, or ake, publish, sign, or deposit in the office of the secretary of state, or in any other public ice, or cause to be so deposited, any document, statement of persons elected to any offices positions of trust at said election, and from giving any effect to the same if already filed d deposited, unless the same be with the concurrent action and lawfully given consent the said Lynch, Hawkins, Bovee, and Longstreet, or a majority thereof, or of a sufficient umber of them to constitute a majority of a board of returning officers, acting as such turning officers.

"And it is further ordered that the said defendants, Jack Wharton, Frank H. Hatch, urant Da Ponte, and the New Orleans Republican Printing Company, until the final aring of this cause, or until the further order of the court, be severally and respect- ely enjoined and restrained to the same extent, effect, and manner as said complainant s in his said bill of complaint prayed they may severally and respectively be restrained. d that writs of injunction in due form of law issue against the said defendants, in cordance with the terms of this order. And that the returning order heretofore issued d allowed in this cause continue in full force and effect until the court shall otherwise der.

"And in order that the evidence relating to said election may be perpetuated and pre- rved, that it may be of avail upon the hearing of this cause, and in any cause which the id complainant may hereafter be compelled to institute and prosecute to test or deter- ine his right to the office of governor of said State, and in order that public inconven- ice may not result therefrom, it is further ordered that the said Henry C. Warmoth forthwith and without delay deliver unto the said returning officers, John Lynch, orge E. Bovee, Jacob Hawkins, and James Longstreet, each and every paper, docu- ent, affidavit, tally-sheet, list, sworn statement, certificate, letter, communication, or oof which he has or may have in his possession, or which may hereafter come into his ssession from any supervisor or assistant supervisor of registration or election, or any icer or person, commissioner or commissioners, in any manner concerned in the con- ct, control, management, or direction of said election, held on the 4th day of Novem- r, A. D. 1872, in any manner relating to said election, or any voting or ballots cast at d election or in any manner relating thereto, in order that they may consider, canvass, d make due return thereof, as required by law; and when the same are no longer re- ired for the purpose of said canvass, it is ordered that the said defendant, H. C. War- oth, do thereafter immediately file and deposit the same with the clerk of this court, ere to remain until true, accurate, and complete attested copies thereof be made by e clerk, subject to the direction of the court.

"*Injunction.—Issued December* 6, 1872.

"WILLIAM PITT KELLOGG *vs.* HENRY C. WARMOTH, JACK WHARTON, FRANK H. Hatch, Durant Da Ponte, John McEnery, and the New Orleans Republican Printing Company.	No. 6830.

"Circuit court of the United States, fifth circuit and district of Louisiana.

The President of the United States, greeting:

"Whereas it has been represented to us in our said circuit court on the part of William Kellogg, by his bill of complaint lately exhibited against you and each of you, touch- g certain matters and things therein set forth:

"Now, therefore, in consideration of the premises and of the allegations in said bill

contained, you, the said above-named defendants, your attorneys and each of you, are hereby commanded and strictly enjoined under the penalty of the law that you absolutely refrain and desist during the pendency of this cause, until the further order of this court, from in any manner, either directly or indirectly, considering or pretending to consider or canvass any statement, certificate, or return of any supervisor or assistant supervisor of registration, or any officer having any duties to perform about or concerning an election held on the 4th day of November, 1872, in the State of Louisiana, or relating to any votes or ballots cast at said election, except in the presence of John Lynch, Jacob Hawkins, James Longstreet, and George E. Bovee, a board of returning officers for said election, or from submitting or allowing to be submitted, or from aiding or assisting in the submission to the said defendants, Frank H. Hatch, Jack Wharton, Durant Da Ponte, or any other person or persons whatsoever other than the said Hawkins, Bovee, Lynch, and Longstreet, any paper, document, affidavit, statement of votes, return of officers of election, or other proof in any manner relating to said election, and from allowing any other person or persons whatsoever other than those in this order excepted, whether pretending to act as returning officers, or in any other capacity, to inspect, consider, have access to, canvass, or tamper with any paper, document, affidavit, statement of votes, return, or written proof relating to said election, or to the fairness and correctness thereof, that may have heretofore or may hereafter come into his hands or possession, and which by law should properly be laid before, submitted to, or considered by such returning officers of election in making a canvass thereof; and that the said defendant, H. C. Warmoth, be further enjoined and inhibited from altering, suppressing, mutilating, destroying, or secreting any such document, proof, or paper.

"And that he further desist and be enjoined from in any manner interfering with, obstructing, or hindering the said Lynch, Longstreet, Bovee, and Hawkins, or either of them, from full and complete access to, as well as custody of, such documents, proof, or paper.

"And that he further desist and be enjoined from in any manner interfering with, obstructing, or hindering the said Lynch, Longstreet, Bovee, and Hawkins, or either of them, from full and complete access to, as well as custody of, such documents, papers, and proofs relating to said election as he may or shall have in his possession, custody, or control, or as they shall or may demand, either by refusing to deliver such documents or proofs to them, or either of them, or by any suit or proceeding instituted with the intent to hinder, delay, or obstruct them in the performance of their duty as returning officers; and that he be further restrained and enjoined from issuing any commissions to any persons based upon any calculation, deduction, or pretended canvass of ballots cast at said election, or make, publish, sign, or deposit in the office of the secretary of state or in any other public office, or cause to be so deposited, any document, statement of persons elected to any offices or positions of trust at said election, and from giving any effect to the same, if already filed and deposited, unless the same be with the concurrent action and lawfully-given consent of the said Lynch, Hawkins, Bovee, and Longstreet, or a majority thereof, or of a sufficient number of them to constitute a majority of a board of returning officers.

"And it is further ordered that the said defendants, Jack Wharton, Frank H. Hatch, Durant Da Ponte, and the New Orleans Republican Printing Company, until the final hearing of this cause, or until the further order of the court, be severally and respectively enjoined and restrained to the same extent, effect, and manner as said complainant has in his bill of complaint prayed they may severally and respectively be restrained.

"And that writs of injunction in due form of law issue against the said defendants in accordance with the terms of this order.

"And that the restraining order heretofore issued and allowed in this cause continue in full force and effect until the court shall otherwise order.

"Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 6th day of December, in the year of our Lord 1872.

"[SEAL.] F. A. WOOLFLEY, *Clerk.*

"*Marshal's return.*

"Received December 7, 1872, by the United States marshal, and on the same day, month, and year served the within-named persons with a copy of this injunction, as follows: On H. C. Warmoth, by handing the same to him in person at the Saint Charles Hotel, in this city; Jack Wharton, same day, month, and year, served the within injunction by handing the same to him in person at the Saint Charles Hotel, in this city; on Durant Da Ponte, same day, month, and year, by handing the same to him in person in this city; on Frank H. Hatch, same day, month, and year, by handing the same to him in person in this city; on the New Orleans Republican, December 9, 1872, by handing the same to W. R. Fish, president of said paper.

"C. R. STEELE,
"*Deputy United States Marshal.*"

It is somewhat remarkable that in this opinion the judge makes no allusion to the fact that the State-house was then in possession of Federal troops, under an order issued by him, out of court, the night before. The opinion materially misstates the allegations of the bill, and wholly ignores the fact that, under the act of November 20, the governor had appointed a new canvassing board which had in fact canvassed the votes; of all which he was aware, because the proclamation of the governor officially promulgating these facts was embodied in the order for seizing the State-house, made by the judge the night before. The judge also declares that about four thousand affidavits sustain the averments of the bill.

Your committee have examined many of these affidavits, and it is admitted that none of them contain the statement that right of registration or right of voting was denied on account of race, color, or previous condition of servitude.

But in this opinion he disposes of the act of November 20 in a remarkable way. He seems to admit its validity, but seems also determined that it shall not take effect at an inconveniently early date. He admits that it repealed all former election laws, and covered the whole subject of elections; but from this he draws two singular conclusions: First, that inasmuch as the act of November 20 repealed all former election laws, all that had been done under such repealed laws was void; and second, to avoid this difficulty, which he says at first startled him, that it was his duty to continue the old laws in force until the old boards could have a reasonable opportunity to complete all the business before them.

One of two things is certain: The governor's approval of the new election law on the 20th of November gave it effect on that day, or it did not. Assuming that the approval on that day was regular, the new law absolutely repealed all the laws under which the Warmoth board and the Lynch board were pretending to act, and, of course, abolished both boards without regard to the question which was the legal one. All that had been done in the election of November, 1872, in pursuance of the old laws—that is, the registration, voting, and returns—was as valid after the act of November 20 as before. If the canvass had been made by the proper board under the old law, and in all things completed, the rights of parties based upon that canvass would not have been affected by the repeal of the laws. But the act of November 20, taking effect after the returns were made, and before they were canvassed, transferred the duty of canvassing to the new board created by the act.

Congress, a year or two ago, passed an act creating a new judicial district in the State of Wisconsin, carved out of the territory of the then existing district. When the President signed the bill, the circuit court for the old district was in session, and in the midst of a jury-trial, in that part of the State which the act erected into a new district. What would have been said if the court had determined not to regard the act of Congress until that trial could be completed? The court stopped, and the trial fell. Acts have frequently been passed abolishing courts. It never was pretended that the abolished court could proceed and dispose of pending causes. If the act abolishing a court transfers its jurisdiction to another court, or creates a new court in its stead, the new court assumes jurisdiction and proceeds with the causes, and orders and injunctions granted by the old court are valid in the new.

A few years since, on admitting one of the new States, by which the Territorial courts were abolished, Congress, by inadvertence, omitted to provide for pending causes in those courts; and, after a suspension of jurisdiction for a year or more, Congress passed an act transferring those causes which were of Federal cognizance to the courts of the Union, and the Supreme Court held it valid.

In the opinion of your committee there can be no doubt—conceding the validity of the act of November 20—that it transferred the duty of canvassing the returns of the last election to the board to be elected under the provisions of the act. The act provided for such election by the senate, and, taking effect in the vacation of the legislature, created offices to be filled thereafter by the senate. This is what is styled in that State an original vacancy, which, happening in the vacation of the legislature, the governor is authorized to fill by appointment; and it is said that the courts of that State have repeatedly recognized the right of the governor to make such appointments.

Viewed in any light in which your committee can consider them, the orders and injunctions made and granted by Judge Durell in this cause are most reprehensible, erroneous in point of law, and are wholly void for want of jurisdiction; and your committee must express their sorrow and humiliation that a judge of the United States should have proceeded in such flagrant disregard of his duty, and have so far overstepped the limits of Federal jurisdiction.

After the foregoing decision was made by Judge Durell, Armstead filed a bill in the eighth district court against the members of the Lynch board, and obtained an injunction commanding them to make no canvass of the November election, except upon the returns made in pursuance of law. This injunction in no way conflicted with the decision

of Judge Durell; for, conceding Lynch that the board was, notwithstanding the repeal of the law creating it, a valid board, it cannot be doubted that the courts of the State might restrain that board from canvassing any but the legal returns of the election.

A writ of *certiorari* was issued by the Federal court in this case, which was disregarded by the State court. No subsequent proceedings were had in the Federal court upon said writ, and the injunction remains in full force.

On the 6th of December, 1872, the Lynch board—Bovee (who was then acting as secretary of state in place of Herron), Lynch, Longstreet, and Hawkins—pretended to have canvassed the returns of the election, and certified to the secretary of state that Kellogg had been elected governor; Antoine, lieutenant-governor; Clinton, auditor; Field, attorney-general; Brown, superintendent of education, and Deslondes, secretary of state; and also certified a list of persons whom they had determined to be elected to the legislature.

There is nothing in all the comedy of blunders and frauds under consideration more indefensible than the pretended canvass of this board.

The following are some of the objections to the validity of their proceedings:

1. The board had been abolished by the act of November 20.

2. The board was under valid and existing injunctions restraining it from acting at all, and an injunction in the Armstead case restraining it from making any canvass not based upon the official returns of the election.

3. Conceding the board was in existence, and had full authority to canvass the returns, it had no returns to canvass.

The returns from the parishes had been made, under the law of 1870, to the governor, and not one of them was before the Lynch board.

It was testified before your committee by Mr. Bovee himself, who participated in this canvass by the Lynch board, that they were determined to have a republican legislature, and made their canvass to that end. The testimony abundantly establishes the fraudulent character of their canvass. In some cases they had what were supposed to be copies of the original returns, in other cases they had nothing but newspaper statements, and in other cases, where they had nothing whatever to act upon, they made an estimate based upon their knowledge of the political complexion of the parish, of what the vote ought to have been. They also counted a large number of affidavits purporting to be sworn to by voters who had been wrongfully denied registration or the right to vote, many of which affidavits they must have known to be forgeries. It was testified by one witness that he forged over a thousand affidavits, and delivered them to the Lynch board while it was in session. It is quite unnecessary to waste time in considering this part of the case, for no person can examine the testimony ever so cursorily without seeing that this pretended canvass had no semblance of integrity.

But it has been claimed before your committee that a decision of the supreme court of Louisiana, rendered since this investigation commenced, has determined that the Lynch board was the legal returning board at the time it pretended to canvass the votes; and it is urged that a wholesome regard for the rights of the State precludes the Senate from investigating this subject back of that decision; that the canvassers were a board of officers created by the State law, and that the decision of the supreme court having determined that the Lynch board was the legal board the United States is esstopped by that decision, and the canvass made by the board. To this there are three answers:

First. The supreme court, in the case referred to, is understood not to have had any testimony before it showing the character of the proceedings by the Lynch board, which testimony is before your committee very fully. Fraud vitiates everything, and it is certain that no court, upon the testimony before your committee, could hold the canvass by that board to be valid.

Second. In the opinion of your committee the supreme court had no jurisdiction of the case in which they made the decision. The judgments of every court, the most exalted in character, are absolutely void if rendered without jurisdiction. But this point will be considered more fully hereafter.

Third. But for the interference of Judge Durell in the matter of this State election, a matter wholly beyond his jurisdiction, the McEnery government would to-day have been the *de facto* government of the State. Judge Durell interposed the Army of the United States between the people of Louisiana and the only government which has the semblance of regularity, and the result of this has been to establish the Kellogg government, so far as that State now has any government. For the United States to interfere in a State election, and, by the employment of troops, set up a governor and legislature without a shadow of right, and then to refuse redress of the wrong, upon the ground that to grant relief would be interfering with the rights of the State, is a proposition difficult to utter with a grave countenance. Besides, it is impossible to determine to what extent the supreme court may have been influenced in rendering this decision by the fact that the Kellogg government, the creation of the Lynch board, had already been established, and the expectation that it would be sustained by Federal authority.

But so much stress is laid upon this decision of the supreme court that it merits a more particular notice, and we shall examine it with a view to determine whether the court had jurisdiction. It is said that the supreme court of a State is the sole judge of its jurisdiction under State laws, and that the supreme court here expressly decided that it had jurisdiction of this cause. Every judgment implies an assertion of jurisdiction, but it is well settled that no judgment of any court has validity when it is shown that it was rendered without jurisdiction. The Constitution of the United States declares that in each State full faith and credit shall be given to the records and judicial proceedings of every other State. And yet it is well settled that when the record of a judgment rendered by the court of another State is produced, inquiry may be made as to the jurisdiction of the court to render such judgment, and that, too, although the court rendering the judgment may have expressly asserted its jurisdiction. Whoever presents the record of any judicial proceeding, and claims for it conclusive effect, asserts that the court had jurisdiction, and if it can be shown that such jurisdiction did not exist the paper is no record.

Now, to examine the decision in question with reference to jurisdiction:

The suit was commenced in the eighth district court of New Orleans, by the Lynch board against the Warmoth board, on the 14th of November, 1872, under the "intrusion act," for the purpose of determining which was the legal board. This suit was analogous to a proceeding by *quo warranto* at the common law. The only question involved—the entire subject-matter of the suit—was whether Lynch and the other members of that board, or Warmoth and the other members of his board, were authorized to act as State canvassers. The plaintiffs averred themselves to be the legal members of the board, and that the defendants had intruded into their offices. This was the only question that could be settled by that proceeding.

On the 19th November the court decided in favor of the plaintiffs, the Lynch board. On the 21st November motion for new trial was made, and was set for hearing on the 25th November. The hearing of the motion was on that day postponed, and was finally had, and the motion granted on the 3d of December; and the suit was dismissed upon the ground that the act of November 20 repealed all former election laws, and abolished the office.

By the constitution, article 74, the appellate power of the supreme court extends only to cases "where the matter in dispute shall exceed $500."

It is well settled by adjudications that where an office is in dispute the amount involved is determined by the amount of salary attached to the office. In this case the board had no salary. Therefore the Lynch board could not appeal from the judgment dismissing the suit.

On the 19th day of December, A. P. Field, a stranger to the cause, presented his petition for intervention and appeal.

His petition states that he was elected attorney-general at the November election, 1872, and that it had been so declared by the Lynch board, and that he had been duly commissioned; that he was interested in this case, for that the plaintiffs were legal returning officers, and had returned that he had been duly elected; and that the judgment in said case, against the plaintiffs therein, "jeopardizes the position of your petitioner in his said office, whereby your petitioner has an interest in having such judgment reversed and set aside;" and that he had an interest in this case exceeding $500, the salary of attorney-general being $5,000 per annum. The petitioner prayed an appeal to the supreme court, which was granted.

In the opinion of the majority of the supreme court it is attempted to be shown that the Lynch board might have appealed from the judgment dismissing their suit, upon the ground that, although it did not involve the amount of $500, pecuniary interest, it was very important to the people of the State. The theory that, although a case involves no pecuniary amount, it may, from its magnificence or public importance, be cognizable by a court whose jurisdiction is, by the constitution, limited to cases involving $500, is new to your committee; but, conceding its correctness, its materiality is not perceived, because the Lynch board did not appeal.

We have carefully examined the opinions of the majority of the court, and the cases cited, and also the dissenting opinions of Judge Wyly and Judge Kennard, with the cases referred to by them. We are of opinion that the dissenting opinions of Wyly and Kennard declare the true principles of law applicable to this subject, and we adopt the opinion of Judge Wyly as a part of this report:

Opinion of Judge Wyly.

"State *ex rel.* Attorney-General *et al. vs.* Jack Wharton *et al.* Wyly, judge, dissenting.

"The judgment of a court without jurisdiction *ratione materiæ* is a nullity so absolute

it need not be pronounced. The court will notice the want of jurisdiction *ex proprio motu.*

"It is well settled that an intervention is not allowable where the party seeking to intervene would have no separate cause of action against either or both of the litigants, or where he has no claim to the immediate object of the litigation.

"The immediate object of the litigation in the case before us is to determine the title to the offices of the returning board of election, under act No. 100 of the acts of 1870

"The controversy is between the relators and the defendants for these offices.

"A. P. Field, who intervenes and brings up this appeal, does not claim the offices in dispute. He holds the office of attorney-general, and as neither the relators nor the defendants set up a claim to his office, or attempt in any manner to impede the administration thereof, he has no cause of action against either of them.

"He, therefore, has no right to intervene, because the law will not allow a party to thrust himself into a litigation he would be prohibited from instituting for himself. The object of interpleading is to abridge litigation, and avoid the multiplicity of suits. Having no cause of action against either of the litigants, and not claiming the offices in dispute, how can A. P. Field interplead, and, by appealing, protract a vexatious litigation dropped by the original parties?

"Such pleading is not allowable in ordinary suits; but this is a proceeding under the intrusion act to determine whether the relators or the defendants are entitled to the offices of the returning board of election under the act of 1870.

"The law provides that suits of this character must be brought in the name of the State, on the relation of the district attorney or the attorney-general, against the party accused of intruding into or unlawfully holding an office; that the name of the person claiming to be rightfully entitled to said office may be joined as plaintiff with the State; and that when the intrusion is made apparent the court may decide the defendant to be an intruder, eject him from office, and order that the person joined with the State as plaintiff may be inducted into office. (Acts of 1868, pages 71 and 199.)

"No provision is made for an intervention in a suit of this kind, and in my opinion it is not allowable. If a controversy for a certain office be settled improperly under a proceeding of this character, and the person inducted into office is not entitled to it, as against a third party, who was not joined as plaintiff with the State, the rights of such party are in no manner impaired. He can by mandamus if necessary compel the district attorney or the attorney-general to institute in his behalf a proceeding in the name of the State, under the intrusion act, and have his title to the office established and the previously successful litigant ejected therefrom. After the time for contesting the election has passed, the only suit to establish title to office that can be brought is a suit under the intrusion act, and that, as before remarked, must be brought in the name of the State. The State, as before remarked by this court, must take the initiative; no one can litigate for office under that statute in his own name. And if a person cannot in his own name bring an action for the office he claims, how can he accomplish the same object by filing a petition of intervention in his own name, setting up his separate demand?

"As I understand the intrusion law, no one will be allowed to demand an office in this State in a proceeding in his own name, whether he pleads directly in a separate action or whether he interpleads in an action between other parties. Whenever he sees fit to set up his demand for an office the statutes to which I have referred prescribe the precise form or mode of procedure in which he must bring that demand in order that the court may decide the title to the office.

"If the State under the intrusion law must be the prominent litigant, and no demand for office can be set up except in the name of the State, how can there be an intervention? Can this State intervene in her own suit? Can the State, suing for A, set up a separate demand in her own suit in behalf of B? Can the same party be both plaintiff and intervenor in the same suit? Such a proposition to a legal mind is utterly absurd. But then, how are the rights of several persons claiming a particular office to be determined without numerous suits, which the law abhors? The answer is plain and simple.

"It is found in section 9 of the intrusion law, being act No. 58 of the acts of 1868. It is in these words: 'That where several persons claim to be entitled to the same office or franchise one action may be brought against all such persons in the same action, in order to try their respective rights to such office or franchise.'

"Here, then, to simplify pleading and to settle conflicting titles to office, the State has enacted a law by which she can in her own name in one action sue all the claimants to the office in dispute, and in the same action 'try their respective rights to such office or franchise.'

"From the very language of the law it is apparent that no interpleading was contemplated by the lawgiver. And, indeed, under the statute it could not be done, because, as before observed, the State alone can bring the suit, and she cannot in the same action occupy two contradictory positions, that of plaintiff, the prominent litigant, and that of

intervenor, a third party, a stranger to the suit. Is it doubted that the State is the real litigant in suits under the intrusion law? I point to the State *vs.* Krieder, 21 An., 482, and numerous other decisions wherein this court has so often affirmed it, and I refer to the statute itself.

"It is well settled that in a contest for office the pecuniary interest involved is the amount of the salary.

"In the suit before us there is no salary at all. Consequently, as between the original parties, the matter in dispute does not exceed $500, and this court is without jurisdiction *ratione materiæ*. To ascertain the jurisdiction of the court it is idle to discuss general principles or to cite the adjudications of the Supreme Court of the United States, because it does not spring from such sources. The jurisdiction of this court is limited and defined in precise terms in the constitution of this State, the instrument creating it, and beyond these limitations we cannot go without usurpation.

"This court has only appellate jurisdiction, 'which shall extend to all cases when the matter in dispute shall exceed $500.' * * * (Article 74, constitution of 1868.)

"But the intervenor and appellant contends that as his salary of attorney-general is $5,000 he has a pecuniary interest in this litigation exceeding $500, and therefore the court as to him has jurisdiction. For argument let us assume that it is so. We then have no anomaly of a jurisdiction as to one litigant, and no jurisdiction as to the others, and positively no jurisdiction as to the offices in controversy, the immediate object in dispute, and of the litigation.

"The matter in dispute between A and B, the very object of their litigation, has a pecuniary value less than $500; neither can appeal to this court for want of jurisdiction; the difficulty can be obviated; the judgment below can be reversed; all that is necessary is for a third party to aver that as he owns some other object worth $500 he has a pecuniary interest in the controversy exceeding $500 and therefore can intervene and appeal. If the doctrine contended for be true, all the inferior courts of this State, including justices of the peace, may in the same manner be brought before this court for revision. Such a proposition is unreasonable and absurd. In my judgment the title to an office the salary of which is less than $500 cannot be determined by this court, for want of jurisdiction *ratione materiæ*, it matters not who is the appellant, and it matters not how many affidavits are filed setting up a pecuniary interest exceeding the amount of the salary. A third party appealing from a judgment must show a direct pecuniary interest in the subject-matter of the suit. (Attorney-general *vs.* Markey, Kaiser, 21 Ann., 743; 1 N. S., 308; 4 N. S., 342; 2 R., 391.) The subject-matter of this suit is the title to the offices of the returning boards of election under act No. 100 of the acts of 1870, to which offices there is no salary. Therefore neither the original litigants nor the intervenor has a direct pecuniary interest in the subject-matter of this suit and therefore cannot appeal, because this court is without jurisdiction *ratione materiæ*. It is therefore my judgment that if an intervention in a case like this were allowable, and if a third party could intervene and appeal from a judgment not appealable by the original litigants, because the matter in dispute is less than $500, the intervenor, A. P. Field, has not shown a direct pecuniary interest in this suit sufficient to entitle him to the appeal or sufficient to give this court jurisdiction.

"If he had been joined as plaintiff with the State in this suit, he could not appeal, because the subject-matter of the suit is less than $500. The argument, however, is urged that Field has a direct pecuniary interest in this case, because, as the time for contesting elections has passed (more than ten days after the election having elapsed), he has no other way to vindicate his title to the office of attorney-general. That if the board by whom he was returned as elected was not the lawful returning board, then his title to the office has no basis upon which to rest. Consequently, his entire salary as attorney-general is involved in this controversy between the two returning boards.

"The answer to this is twofold: First, the controversy between these returning boards in no way prevented him from instituting, within proper time, the usual proceedings to contest the election. Second, his title to the office of attorney-general cannot now be determined as against H. N. Ogden, his opponent at the election, because the latter is not a party to these proceedings. Besides, in a controversy for one office the title to another office (separate and distinct) cannot be determined. A proceeding under the "intrusion act" can only determine the title to the office in dispute, and no one can become a party to that proceeding who does not claim the immediate object of the litigation. If A. P. Field, who was returned as elected attorney-general, can intervene in this controversy, every candidate for office at the late election, every person expecting an office if his party prevails, and every person incidentally or remotely interested in the settlement of the issue may intervene, and the rights of everybody, the titles to all the offices in the State, may at once be determined, notwithstanding the opponents of these various intervenors were not cited, and were not parties to the suit between these returning boards. An argument that leads to such monstrous absurdities ought not to be accepted by this court as correct. In

State *vs.* Mason *et al.*, 149, 506, A., where parties not claiming the offices of mayor and councilmen of Carrollton contested the election of the defendants to said offices, this court said: 'It appears reasonable that no one but a person pretending to have a right to an office should be permitted to test the right of the incumbent to that office.' In Voisin and others *vs.* Leche *et al.*, 23 A., 25, a similar case, this doctrine was affirmed by this court, the identical language being adopted by Chief-Justice Ludeling, the organ of the court. In State *ex rel.* Sullivan *et al. vs.* Mount *et al.*, 21 A., 755, where the controversy was between two boards of school directors, and where Kendall, the secretary of one of the boards, appealed, claiming that as his salary was $1,800 he had a pecuniary interest in the controversy exceeding $500, this court held that 'in a controversy for office under the intrusion act' a third party, not holding or claiming the office in dispute, cannot appeal from the judgment of the court *a qua.* There the board that appointed Kendall secretary was unsuccessful in the controversy with the other board of school directors, and could not appeal because of the want of pecuniary interest (there being no salary allowed the school directors of the parish of Orleans). Kendall, the secretary, appealed, and contended that, unless his right to appeal was maintained, he would lose his office, affording him a salary of $1,800 per annum; that the very basis of his office rested upon the reversal of the judgment in the controversy between these two boards of school directors The court held that as he did not claim the offices in dispute (the immediate object of the litigation), Kendall could not 'appeal from the judgment of the court *a qua.*' Here neither of the returning boards of election has appealed from the judgment in the controversy between them, because, having no salary, there is no pecuniary interest involved as between them. A. P. Field, claiming to be returned as attorney-general by one of these boards, whose suit under the 'intrusion act' was dismissed, has appealed, and he contends that unless that judgment is reversed and the board which returned him as elected attorney-general is recognized by this court and declared the lawful board, his title to that office has no basis upon which to rest. The case presented by him is identical in principle with that presented by Kendall, and should have the same solution. He is a third party, not claiming the offices in controversy, and cannot appeal from the judgment of the court *a qua*, 21 A., 735. The appellant cites the case of Byerly *vs.* Judge of the Eighth District Court, 23 A., 768, to show that a third party having an appealable interest may appeal. That case is not like the one before the court. Byerly showed a direct pecuniary interest in the matter in dispute.

"I deem it proper to remark, however, that there is a feature of that case that I do not approve of. I was not present at the hearing, and took no part in its decision. Whatever comfort it may give the appellant, however, is utterly annihilated in the subsequent final decision of that same case reported in 24 A., 115.

"The case in 12 A., 48, cited to show that a third party may appeal, is wholly unlike the case before the court. There the property of a third party had been seized, and the appeal was from the judgment dissolving his injunction. It being a separate demand, C. P., 398, and the value of the property being sufficient to give this court jurisdiction, there was no error in maintaining the appeal.

"There are other grounds for dismissing the appeal, which I deem it unnecessary to notice, because, to my mind, the argument which I have endeavored to make fully maintains the exception of the defendants that A. P. Field has no right to take this appeal.

"Believing that the case is not within the jurisdiction of the court and that the decree of a court without jurisdiction, *ratione materiæ*, is an absolute nullity, I hardly think it necessary to enter upon an elaborate discussion of the issues presented for adjudication upon the merits. I will state, however, some of the conclusions forced upon my mind from a careful consideration of these questions.

"I believe the governor had the right to sign the new election law on the 20th of November, 1872; that it became operative from the moment of the signing, and that it entirely repealed the law creating the offices in controversy, to wit, act No. 100 of the acts of 1870.

"That the governor has the right in this State to sign and approve laws after the session of the legislature has ended has often been decided by this court; indeed, I regard the jurisprudence settled on this point. But the appellant contends with some show of plausibility that when this act was signed (the 20th of November, 1872) the legislature that enacted the law had passed out of existence (the terms of most all the members of the general assembly having expired); that with the cessation of their terms ended all of their unfinished business, so that the governor could not complete by his approval and signature a statute after its authors had ceased to exist.

"This argument is ingenious but unsound. The fallacy lies in supposing that the law-making power had ceased to exist. While our structure of government remains neither of the co-ordinate branches thereof can cease to exist, although the persons intrusted by the people to administer them often discontinue to do so because of death, resignation, or the lapse of the terms for which these public functions were chosen.

"In this State the effect of a repealing law is not always a question of construction. When a repealing law like any other law 'is clear and free from ambiguity, the letter of it is not to be disregarded under pretext of pursuing its spirit' (C. C., 13);

"It is only when the law is dubious in its language that its meaning must be sought by construction (C. C., 16);

"In my opinion the election law approved 20th November, 1872, entirely repealed the law of 1870. It devised a new and different way of canvassing the votes and making the returns, and it entirely abolished the offices involved in this controversy. How the incumbents of offices that have been abolished can pretend to hold over under article 122 of the constitution till their successors are inducted into office I cannot imagine.

"How can there be an inducting of successors into offices that do not exist?

"But great stress is laid on the case of Kreider, 21 A., 482, and it is insisted that the ruling in that case covers this one. I do not think so. The statute interpreted in that case differed very materially from the one now under examination. There the court held that the thirteenth section of the act of September 14, 1868, repealing the charter of Jefferson, approved March 8, 1867, did not abolish the office of the corporation. This clause only repealed the old charter in so far as its provisions were not incorporated in the new charter.

"The title of that act was 'An act for revising and amending the charter of the city of Jefferson.'

"The title of the act only proposed to 'revise and amend' the charter.

"Under cover of such a title the old act could not be abolished, and any clause to that effect would be repugnant to article 114 of the constitution requiring the objects of every statute to be expressed in the title thereof. In the Kreider case it was held that the 'clause only repealed the old charter in so far as its provisions were not incorporated in the new charter.'

"The provisions of that act did not abolish the offices of the corporation, but continued them.

"In the statute before us the officers of returning boards in the old law are not carried over and incorporated in it. Therefore these offices are abolished under the authority of Kreider's case, which has been produced to show the reverse.

"In my judgment the act approved 20th November, 1872, is not mere revisory legislation; but whether it is or not is of no consequence, because the offices claimed by the relators under the old law are abolished, if not directly at least by implication, because the continuing of said offices is not provided for in the new law, and it is inconsistent therewith.

"The provision of act No. 100 of the acts of 1870, creating these offices and designating the duties to be performed therein, is in conflict with the provisions of the act of 20th November, 1872, and is therefore repealed.

"This was the view taken by this court in the analogous case of the State *ex rel.* Martien *vs.* Lavigne (23 A., 111);

"Here, to my mind, another difficulty arises. What judicial effect can the decision have? What legal right shall we order to be executed? A. P. Field cannot be put into the offices in controversy, because he don't claim them.

"We cannot eject the defendants and induct into these offices the relators, because the plaintiffs have not appealed from the judgment dismissing their suit. (1 N. S., 308.) Besides, the defendants are not claiming the offices, but contend that they, as well as the plaintiffs, are not out of office by reason of the approval of the election law of 1872.

"Furthermore, if the approval of said law is not valid the relators have nothing to contend for, having canvassed and made their returns. Notwithstanding the suit, they have exhausted the powers confided to them, and they are now *functus officio*—they are no longer excluded from office. There are other questiods which I deem it unnecessary to discuss.

"With all due respect for the views of my learned associates, who compose the quorum deciding this case, I feel constrained to differ with them in the conclusion to which they have arrived, because I believe their decision is not in harmony with the analogies of our law, and the numerous adjudications of ourselves and our predecessors. I believe that it practically overrules many important principles and points of practice heretofore deemed settled, and that it is a new departure in the jurisprudence of our State.

"For the reason stated, I feel constrained to dissent in this case."

No man can be said to be aggrieved by a judgment unless he has some direct interest in it. A man may be aggrieved in the sense of being distressed or afflicted at the defeat of his neighbor or friend, or because he thinks the judgment will have injurious effects upon public interests. But before he can intervene and appeal he must show that some right of his is injuriously affected by the judgment. In a suit by *quo warranto* against a person who had been for years acting as a judge of a court it would hardly be maintained that every person who had recovered a judgment while the defendant had been

acting as judge could intervene and appeal from a judgment determining that the judge had wrongfully exercised the office. One reason is that a judgment rendered by a *de facto* judge is as valid between the parties as if rendered by a judge *de jure*. And in this suit the supreme court, although they declare that Field was entitled to an appeal, make no decision in his favor; do not declare that he is entitled to the office of attorney-general, and could not, for his opponent was not before the court; but reverse the judgment below solely upon the ground that it was erroneous as to the Lynch board, who had not appealed. We therefore dismiss the further consideration of this decision of the supreme court of the State with the further remark that if the jurisdiction of the supreme court were conceded their decision would not be conclusive against the United States in an inquiry like this, to ascertain if the State has a government.

We now proceed to consider another case pending before Judge Durell, in which, if possible, he has still more flagrantly transcended his jurisdiction.

The act of Congress of May 31, 1870, 16 Stat. L., 146, sec 23, provides:

"That whenever any person shall be defeated or deprived of his election to any office, except elector of President or Vice-President, Representative, or Delegate in Congress, or member of a State legislature, by reason of the denial to any citizen or citizens who shall offer to vote of the right to vote on account of race, color, or previous condition of servitude," such person may have his action in the Federal court, &c.

On the 7th day of December, 1872, C. C. Antoine, claiming that he had been elected lieutenant-governor at the election in November, 1872, filed his bill of complaint on the equity side of the circuit court of the United States for the district of Louisiana, against the Warmoth board—Warmoth, Wharton, Hatch, and Da Ponte—against the holding-over clerk of the house of representatives, and the holding-over secretary of the senate; and against Y. A. Woodward, assistant secretary of state; against Penn, claiming to be lieutenant-governor; and against Armstead, claiming to be secretary of state; against Blanchard, state registrar of voters; against the metropolitan police of the city of New Orleans; against all the persons determined by the board composed of De Feriet and others, appointed under the act of November 20, to have been elected senators and members of the house of representatives: and against the De Feriet board.

This bill contained, in substance, the allegations contained in the Kellogg bill, though more in detail; and set forth that secret and confidential instructions were issued to the State supervisors of registration to exclude the supervisors appointed by the United States from the canvass of State and parish officers; and to permit no person to vote who had been denied registration, unless they knew that he had been so denied; and that Warmoth manipulated the election so as to defeat the complainant; excluding the votes given by colored citizens from the count, &c.; the approval by the governor of the act of November 20; the appointment of De Feriet and others, canvassers under the said act; that aid De Feriet board pretended to make a canvass, and that proclamation thereof was made, &c.; that by law it was the duty of the secretary of state to transmit to Vigers, clerk of the house, and Merritt, secretary of the senate, a list of the persons elected to the legislature; they being the only persons competent to organize the legislature; that Wharton, as secretary of state, had furnished to the secretary of the senate the list of persons declared by the De Feriet board to be elected, and that it was the intention of Merritt to organize the senate accordingly; and the same as to the house of representatives; and that the legislature, if so organized, would deprive the complainant of his rights, &c.; that Bovee is the lawful secretary of state, and Wharton has no right to said office; that the metropolitan police are acting in collusion and will aid the fraudulent purpose, &c.

The bill prays injunction against Warmoth, restraining him from interfering with the organization of the legislature on the 9th day of January, 1873, or on any future day, &c.; and from aiding any person to a seat not certified by Bovee; and an injunction against the police from interfering, &c.; and against the members of the legislature certified by the De Feriet board; and against Merritt, secretary of the senate, restraining him from placing on the roll any name not certified by Bovee; same as to the house of representatives against Bovee, restraining the clerk from receiving any returns except from the Lynch board.

The prayer for relief is as follows:

"And may it also please your honors to order and adjudge that the said defendant, H. C. Warmoth, within a period of time to be fixed by your honors, do make and deposit in this honorable court, in the office of the clerk thereof, full, true, and exact sworn copies of each and every paper, document, affidavit, tally-sheet, list, sworn statement or certificate, or letter which he may have received, or may have come into his possession from any commissioner or commissioners, or any officer concerned in the control or management of said election, or who had any duties to perform in connection therewith, and from all supervisors or assistant supervisors of election, in any manner relating to said election, in order that the same may be beyond the power of destruction by the said

defendant, Warmoth, and his said confederates, and in order that the same may be saved to your orator as evidence to enable him to establish his right to the office as aforesaid in any judicial proceedings which he may be compelled to institute in this court to establish and vindicate the same, and that the same may be also preserved for use or proof in support of your orator's bill in this behalf, and to establish his right to the relief by him herein and hereby prayed for; and that the said evidence, documents, &c., to be produced remain on file in this court, in order that the same may be preserved as evidence in any action which your orator may be required to institute in this court to establish his right to said office."

The bill also contained prayer for process and for general relief.

The court granted a rule to show cause, returnable on the 11th December, 1872, why injunctions *pendente lite* should not be allowed as prayed for, and granted restraining order in the mean time to the extent and effect prayed for in the bill; and for the purpose of explaining the extent and scope of the order directed the clerk to attach thereto a copy of the prayer for injunction, which order and copy attached are as follows:

"Circuit court of the United States in and for the district of Louisiana, in equity.

"C. C. ANTOINE
vs.
"H. C. WARMOTH ET AL. } No. 6861.

"*Restraining order.—Issued December* 7, 1872.

"Whereas the plaintiff herein has this day filed and exhibited his bill of complaint against the said defendant, H. C. Warmoth, and the other defendants named in said bill of complaint, and has therein prayed that injunctions, *pendente lite*, issue against the defendants therein, and that a restraining order be also issued restraining the said defendants as prayed for in said bill from doing or permitting to be done the acts in said bill complained of:

"Now, therefore, on motion of J. R. Beckwith and E. C. Billings, solicitors for complainant, it is ordered that the defendants named in said bill do show cause on the 11th day of December, 1872, why injunctions, *pendente lite*, should not be allowed as prayed for. It is further ordered that said defendants, each and every one of them, be, and are hereby, commanded and restrained to the extent and effect as in said bill of complaint prayed [the clerk will attach to this order a copy of the prayer for injunction as set forth in said bill of complaint] until the hearing and determination of said rule for injunction and until the further order of the court in the premises.

"E. H. DURELL, *Judge.*

"A true and correct copy of the original order on file in this cause.

"F. A. WOOLFLEY, *Clerk.*

"Wherefore your orator humbly prays that your honor will grant unto him all just and proper relief in the premises; that you will allow and grant unto him the most gracious writ of injunction issued under the seal of this honorable court, directed to the said defendant, Henry C. Warmoth, enjoining and restraining him from in any manner, directly or indirectly, by himself or through any other officer of the State, city, or parish, or through any other person, from controlling or attempting to control, interfering with, or attempting to interfere with, the organization of either branch of the general assembly of the State of Louisiana, called to assemble on the 9th day of December, A. D. 1872, or that may be called to assemble at any future day, and from directly or indirectly, either by himself or through any other person, preventing any person claiming to be a member of said general assembly from having full and free ingress and egress to and from the place, building, and room of that branch of said general assembly of which he may claim to be a member, or from issuing any written or oral order or instruction, request, or direction, calculated or designed to directly or indirectly control or interfere with the organization of either of the branches of said general assembly, or calculated or designed to prevent any person from having free access thereto, who claims to be a member thereof, and from doing any act, or from giving any order, direction or making any request which may directly or indirectly prevent or induce any person from being present and taking part in the organization of said senate, called to convene on the said 9th day of December, or at any future day, who may be returned as a member thereof by the board of returning officers, composed of the said Henry C. Warmoth, George E. Bovee, James Longstreet, Jacob Hawkins, and John Lynch, and whose name certificate be transmitted by the said George E. Bovee, secretary of state, to the said H. C. Warmoth,

the secretary of the senate of the last general assembly, and placed by the said Merritt upon the roll of said senate, so to be convened, and from in any manner, directly or indirectly, aiding or abetting any person who is not so returned by said returning board as a member of said senate, so to be convened, and whose name is not so transmitted as a member elected to said senate, and is not so placed upon the roll of said senate, from participating in the organization of said senate, and from doing any act, or from giving any order, direction, or making any request which may directly or indirectly prevent or hinder any person from being present and taking part in the organization of said house, called to convene on the said 9th day of December, or that may be called to convene at any future day, who may be returned as a member thereof by the board of returning officers, composed of the said Henry C. Warmoth, George E. Bovee, James Longstreet, Jacob Hawkins, and John Lynch, and whose name shall also be transmitted by the said George E. Bovee, secretary of state, to William Vigers, the secretary of the house of the last general assembly, and placed by the said William Vigers upon the roll of said house so to be convened, and from in any manner directly or indirectly aiding or abetting any person who is not so returned by said returning board as a member of said house, so to be convened, and whose name is not so transmitted as a member elected to said house, and is not so placed upon the roll of said house, from participating in the organization of said house.

"Except that the said Henry C. Warmoth is not hereby prohibited from participating in the canvass and return of the members elected to the said branches of said general assembly, so to be convened, provided he do the same in conjunction with and in the presence of said George E. Bovee, James Longstreet, Jacob Hawkins, and John Lynch, but not otherwise. And that he further be enjoined and restrained from in any manner obstructing or hindering the said William Vigers, clerk of the house of representatives, or the said secretary of the senate, Charles H. Merritt, in the free and unobstructed discharge of their duties, or in full and complete obedience to the orders of this court, and from suspending, removing them, or either of them, from office, or appointing or ordering, or abetting any other person or persons to perform any act which by law or the orders of this court devolves on either the said Vigers, Merritt, or upon George E. Bovee, secretary of state, and from recognizing any validity in any act done or performed by any other person or persons pretending to act in the office or capacity of either of said officers.

"And that a writ of injunction may also issue, directed to A. S. Badger, chief of metropolitan police, and to each member of the board of the metropolitan police, and to the board of metropolitan police, enjoining and restraining them and each of them from interfering in any manner with the organization of either branch of the general assembly to be convened on the 9th of December, A. D. 1872, or at any time thereafter, except to preserve the peace, and to prevent no person from having access to either of the halls of said houses who is certified by George E. Bovee as being a member-elect of the same.

"And that writs of injunction also issue, directed to the said E. Booth, A. Voorhies, A. J. Lewis, B. F. Jonas, T. B. Stamps, D. S. Cage, R. C. White, T. C. Anderson, J. M. Thompson, E. S. Weber, A. S. Herron, Robert Worrall, O. H. Brewster, E. M. Graham, J. W. McDonald, A. H. Leonard, C. J. C. Puckett, James G. White, J. F. Kelly, enjoining and restraining them and each of them from participating in any manner in the organization of the senate to be convened on the 9th day of December, A. D. 1872, or at any time thereafter, or from doing any act or thing toward, in, or about the organization of said senate, either by casting a vote or otherwise, unless his name shall be and appear on the list of names of members of said senate transmitted to the secretary of the same by George E. Bovee, secretary of state, as having been elected thereto.

"And that a writ of injunction also issue to the said J. J. Mellon and James Timony, J. A. Shakespeare, J. A. Rice, J. J. Finney, E. H. McCaleb, Charles Montaldo, W. B. Barrett, W. L. Stanford, T. B. Blanchard, jr., F. C. Zacharie, F. Fusillier, V. O. King, A. Garidel, L. S. Roderiguez, John Barrow, John Delaney, William Stevens, W. C. Kinsella, C. Kummell, J. B. Eustis, J. McConnell, A. J. Dumont, E. L. Bowers, E. Riviere, P. Landry, C. N. Lewis, E. B. Cox, Numa Vives, T. J. Edwards, W. K. Johnston, T. L. Mills, T. Bynum, J. S. Gardere, J. L. Lobdell, W. S. Cockernam, W. H. Scanlan, L. P. Sandidge, J. C. Moncure, George L. Smith, J. Sella Martin, W. H. Kirkman, Thomas J. Humble, Paul Jones, George C. Bonham, Cain Sartain, Allen J. Davis, W. F. Moreland, Thomas Price, David Young, George Washington, J. P. Elam, A. F. Stephenson, John Goir, James Laws, James W. Armstead, F. W. Norris, J. H. Hadnot, L. A. Snaer, J. K. Cavannaugh, E. A. Hubin, William Kern, C. W. Lowell, J. D. Trahan, John S. Billim, O. Harang, T. G. Davidson, James R. McDowell, C. C. Davenport, E. L. Pierson, W. A. Ponder, W. F. Southard, D. Hill, H. Mahoney, J. P. Harris, L. B. Claiborne, L. Texada, John J. Swan, J. G. P. Hooe, E. W. Dewees, H. F. Vickers, J. F. Smith, R. V. Dueres, M. Hahn, D. K. Gorman, Henry Demas, Benjamin R. Gantt, J. F. Little, E. D. Estilette, L. D. Prescott, V. Bochon, L. A. Martinet, James Costello, M. J. Foster, J. G. Tate, J. R. Stewart, J. S. Mathews, J. J. Booles, P. Fonteliu, J. R. Smart, A. C. Bickham, J. P. Schultz, William

A. Strong, enjoining and restraining them and each of them from participating in any manner in the organization of the house of representatives, to be convened on the 9th day of December, A. D. 1872, or at any time thereafter, or from doing any act or thing toward, in, or about the organization of the same, either by casting a vote or otherwise, unless his name shall be and appear on the list of names of members of said house transmitted to the clerk of the same by George E. Bovee, secretary of state, as having been elected to the same.

"And that a writ of injunction may also issue, directed to Charles H. Merritt, secretary of the senate of the last general assembly, enjoining and restraining him from placing, causing, or suffering to be placed upon the roll of the senate to be convened on the 9th December, A. D. 1872, or at any time thereafter, or from placing, causing, or suffering to be placed upon any list of members-elect to said last mentioned senate, or from announcing, causing, or suffering to be announced, as a member elected to said last mentioned senate, or from recognizing, or causing or suffering to be recognized, as a member elected to said last mentioned senate, or from in any manner designating, or causing, or suffering to be designated, as a member to the said last mentioned senate, prior or during the organization thereof, any person whose name shall not be transmitted to him by George E. Bovee, the secretary of state, upon a list of the names of such persons as have been elected to the said last mentioned senate, and from in any manner acting upon any other list except the one so transmitted by the said George E. Bovee, in the organization of the last mentioned senate, and to disregard in said organization all other lists.

"And that a writ of injunction may also issue directed to William Vigers, clerk of the house of representatives of the last general assembly, enjoining and restraining him from placing, causing or suffering to be placed, upon the roll of the house of representatives, to be convened on the 9th of December, A. D. 1872, or at any time thereafter, or from placing, causing or suffering to be placed, upon any list of members elected to said last mentioned house, or from announcing, causing or suffering to be announced, as a member elected to said last mentioned house of representatives, or from recognizing, or causing or suffering to be recognized, as a member elected to said last mentioned house of representatives, or from in any manner designating, or causing or suffering to be designated, as a member to the said last mentioned house, prior or during the organization thereof, any person whose name shall not be transmitted to him by George E. Bovee, the secretary of state, upon a list of the names of such persons as have been elected to the said last mentioned house of representatives, and from in any manner acting upon any other list except the one so transmitted by the said George E. Bovee in the organization of the last mentioned house of representatives, and to disregard in said organization all other lists.

"And that a writ of injunction also issue directed to saidGeorge E. Bovee, enjoining and restraining him from receiving any return or returns of the election of any State officers or of the members of either branch of the general assembly of the State of Louisiana, excepting such returns as may be received by or filed in the office of him as secretary of state from the board of returning officers, and a majority of the same, composed of Henry C. Warmoth, James Longstreet, and Jacob Hawkins, and John Lynch, and himself, and from delivering, causing, or suffering to be delivered to any speaker of the house of representatives any return except received and filed as above stated of any election whatever, or from making, or causing or suffering to be made, any list of names of the members elected to either branch of the general assembly, except from and according to returns so received or filed, as above stated.

"That a writ of injunction also issue directed to the said Jack Wharton and Samuel Armstead, and each of them, enjoining and restraining them and each of them from receiving any returns of the elections held in the State of Louisiana on the first Monday of November last past, for members of the general assembly, or from transmitting to William Vigers, the clerk of the house of representatives, or to Charles H. Merritt, the secretary of the senate of the last general assembly, or to any other person, any list of names which is or purports to be a list of names of such persons as, or the name of any person who, according to any returns, shall have been, or shall be stated, or claimed, or assumed to have been, elected to either branch of the general assembly called to convene on the 9th day of December, A. D. 1872, or that may be called to convene at any future time, and from making any statement or doing anything calculated or designed to furnish a basis for the organization of either of said branches of the said general assembly, or from delivering or interfering, conniving at, or aiding, or suffering any other person to deliver to the speaker of the house of representatives, or any other person, any returns of any election whatever.

"And that writs of injunction may also issue directed to the said Thomas Isabelle, P. S. Wiltz, J. S. Taylor, J. E. Austin, and G. de Feriet; also issue against the said H. C. Warmoth, Jack Wharton, Frank H. Hatch, and Durant Da Ponte, commanding them and each of them to refrain and desist from pretending to act together as a board of re-

turning officers or as returning officers of elections, from canvassing or attempting to canvass or consider any certificate, document, affidavit, return, statement of votes, or any paper whatsoever properly relating to said election, and from attempting to make a canvass, declare, or publish any pretended deduction, calculation, statement, or proclamation based thereon, or pretended to be derived therefrom, in any way relating or pertaining to said election, held on the 4th day of November, 1872, or certifying to any candidate for office at said election, any certificate of election, or any statement of the result of said election tending to show any right to office in any person growing out of ballots cast at said election, and from meddling with, altering, suppressing, falsifying, obliterating, or destroying any document, paper, voucher, proof, statement of votes, or certificates relating to said election.

"I hereby certify that the foregoing is a true and correct copy of the complainant's prayer for injunction in his bill of complaint in the cause of Cæsar C. Antoine *vs.* Henry C. Warmoth *et al.*, No. 6851 of the docket of the circuit court of the United States for the district of Louisiana, referred to and made a part of the subjoined restraining order.

"[SEAL.] F. A. WOOLFLEY, *Clerk.*

"JANUARY 3, 1873."

"United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

"CLERK'S OFFICE.

"I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, except entries from minutes of continuances, &c., in the case of C. C. Antoine *vs.* H. C. Warmoth *et al.*, No. 6851 of the docket, so far as the same now remains of record or on file in said court.

"Witness my hand and the seal of said court, at the city of New Orleans, this 3d day of January, A. D. 1873.

"[SEAL.] F. A. WOOLFLEY, *Clerk.*"

Here was a restraining order, having the force of an injunction, issued for no purpose under heaven except to control the organization of the legislature and compel the seating of those members who had been returned and certified to by the Lynch board, and exclude those who had been certified by the De Feriet board.

When we consider that the act of Congress under which this proceeding was instituted by express words excludes members of the State legislature from the right to maintain any proceedings in a Federal court to obtain their seats, even when they have been defeated and deprived of their rights, because citizens have been denied the right to vote on account of race, color, or previous condition of servitude; and that the State-house was held by Federal troops under the unlawful and void order of Judge Durell, hereinbefore set forth, which order commanded the marshal to prevent "all unlawful assemblage therein under the guise or pretext of authority claimed by virtue of pretended canvass and returns made by said De Feriet board," we can comprehend the full force and effect of the additional restraining order in the Antoine case.

It was claimed that section 15 of the act of Congress approved February 28, 1871, which provides "that the jurisdiction of the circuit courts of the United States shall extend to all cases in law or equity arising under the provisions of this act, or the act hereby amended," had the effect to repeal the exception in regard to "members of a State legislature" in section 23 of the act of May 31, 1870.

But we think this proposition cannot be maintained. The case of a member of a State legislature claiming his seat was not a case arising under the former act, because it was expressly excluded by that act. It was not a case arising under the latter act, because there is no provision of that act applicable to such a case, or recognizing any purpose of Congress to extend the jurisdiction of circuit courts to the cases excepted in the twenty-third section of the original act. It must be borne in mind that if the fifteenth section of the latter act extended the jurisdiction of the circuit court over the election of members of a State legislature, it did so as to members of Congress, which would be clearly unconstitutional, because the Constitution makes each House of Congress the exclusive judge of the election, returns, and qualification of its own members. The constitution of every State of the Union contains similar provisions in regard to the houses of the legislature of the State. The intention of Congress to pass a law in violation of the express provisions of the Constitution of the United States cannot be maintained unless that intention be expressed in words so plain as to admit of no other construction. There is no provision of the latter act compelling or justifying such a construction. On the contrary, remedies are given by the latter act which fully explain the purpose of that por-

tion of section 15 above quoted, without holding it to be a repeal of the exceptions in section 23 of the former act.

And if a member of a State legislature cannot maintain a suit in the Federal courts to secure his right to sit in the legislature, it can require no argument to show that the lieutenant-governor cannot maintain a suit in the Federal courts on behalf of a hundred such members.

Indeed, it is impossible not to see that this bill was filed, and the restraining order thereon was issued, for the sole purpose of accomplishing, what no Federal court has the jurisdiction to do, the organization of a State legislature.

And your committee cannot refrain from expressing their astonishment that any judge of the United States should thus unwarrantably have interfered with a State government, and know no language too strong to express their condemnation of such a proceeding.

It is the opinion of your committee that but for the unjustifiable interference of Judge Durell, whose orders were executed by United States troops, the canvass made by the De Feriet board, and promulgated by the governor, declaring McEnery to have been elected governor, &c., and also declaring who had been elected to the legislature, would have been acquiesced in by the people, and that government would have entered quietly upon the exercise of the sovereign power of the State. But the proceedings of Judge Durell, and the support given to him by United States troops, resulted in establishing the authority *de facto* of Kellogg and his associates in State offices, and of the persons declared by the Lynch board to be elected to the legislature. We have already seen that the proceedings of that board cannot be sustained without disregarding all the principles of law applicable to the subject, and ignoring the distinction between good faith and fraud.

Your committee are, therefore, led to the conclusion that if the election held in November, 1872, be not absolutely void for frauds committed therein, McEnery and his associates in State offices, and the persons certified as members of the legislature by the De Feriet board, ought to be recognized as the legal government of the State. Considering all the facts established before your committee, there seems no escape from the alternative that the McEnery government must be recognized by Congress, or Congress must provide for a re-election. And this brings us to consider—

1. Whether the election of November last is void for fraud; and
2. If void, has Congress the authority to order a re-election?

First. A careful consideration of the testimony convinces us that, had the election of November last been fairly conducted and returned, Kellogg and his associates, and a legislature composed of the same political party, would have been elected. The colored population of that State outnumbers the white, and in the last election the colored voters were almost unanimous in their support of the Republican ticket. Governor Warmoth, who was elected by the Republicans of the State in 1868, had passed into opposition, and held in his hands the entire machinery of the election. He appointed the supervisors of registration, and they appointed the commissioners of election. The testimony shows a systematic purpose on the part of those conducting the election to throw every possible difficulty in the way of the colored voters in the matter of registration. The polling places are not fixed by law, and at the last election they were purposely established by those conducting the election at places inconvenient of access, in those parishes which were known to be largely Republican; so that, in some instances, voters had to travel over twenty miles to reach the polls. The election was generally conducted in quiet, and was, perhaps, unusually free from disturbance or riot Governor Warmoth, who was the master spirit in the whole proceeding, seems to have relied upon craft rather than violence to carry the State for McEnery. In the canvass of votes which determined the McEnery government to be elected the votes of several Republican parishes were rejected.

The testimony shows that leading and sagacious politicians of the State, who were acting with Warmoth, entertained the opinion before the election that Warmoth's control of the election machinery was equivalent to 20,000 votes; and we are satisfied by the testimony that this opinion was well founded. We believe that had registration been accessible to all, and polling places been properly established, the result of the election would have been entirely different. And although we cannot approve of such a canvass as that made by the Lynch board, who seem to have acted upon the principle of "fighting the devil with fire," and circumventing fraud by fraud, and cannot say that Kellogg's government was elected, nevertheless we believe that Kellogg's government was defeated, and the popular voice reversed, by the fraudulent manipulation of the election.

If the Senate should be inclined not to go behind the official returns of the election, then the McEnery government and legislature must be recognized as the lawful government of the State, and McMillen, if regularly elected by that legislature, should be seated in the Senate in place of Kellogg. But your committee believe that this would be recognizing a government based upon fraud, in defiance of the wishes and intention of the voters of that State.

Second. If the Senate shall concur with us in the opinion that the frauds committed in the election are sufficient to annul it, then it will be necessary for the Senate to consider whether Congress has the power to order a re-election.

This is one of the most important and delicate questions that can arise under the Constitution of the United States. The Constitution, article 4, section 4, provides:

"The United States shall guarantee to every State in this Union a republican form of government," &c.

This provision of the Constitution requires that the United States shall guarantee to every State two things: First, a government; and second, a government which is republican in form.

What is meant by the term "government" in this part of the Constitution? That man or body of men, in any community, who exercise sovereign power constitute the government of that community; and the best definition of a republican government ever given in the English tongue is that given by President Lincoln: "A government of the people, by the people, for the people." A standard author thus defines sovereignty:

"In every society, not being in a state of nature or a state of anarchy, some person or persons must possess the supreme or sovereign power.

"The marks by which the possession of the sovereign power may be distinguished are mainly two, the one positive and the other negative, viz:

"1. A habit of obedience to some determinate person or persons by the community which he or they assume to govern.

"2. The absence of a habit of obedience, on the part of the same person or persons, to any person or government."

This definition furnishes us a criterion for determining whether there is at present any government in the State of Louisiana. And, judging the condition of things by this rule, it is impossible to say that the State has any government whatever. The McEnery government, so called, approaches more nearly a government *de jure*, and the Kellogg government a government *de facto*.

The Kellogg government is in possession of the State-house, the seal, archives, and records of the State, and its empty treasury. There are two bodies of men in that State, one claiming to be the senate and the other the house of representatives, who recognize Kellogg and his associates as the officers of the State. But there is not, and never has been, a quorum of both houses who have any pretense of having been elected to their seats. This pretended legislature is daily passing laws, and Kellogg is approving or vetoing them. This is the legislature which pretended to elect Ray to fill the unexpired portion of Kellogg's term in the Senate. McEnery and his associates claim to be the rightful officers of the State, and two other bodies of men claim to be the senate and house of representatives of the State. And this is the legislature which pretended to elect McMillen to fill Kellogg's unexpired term in the Senate.

But it is claimed that the validity of the Kellogg government has been established by a decision of the supreme court of that State, and that this question is therefore precluded. Before proceeding to consider the case relied upon, it may be well to recall some general principles applicable to this subject.

In Luther *vs.* Borden, 7 Howard, 1, the Supreme Court had occasion to examine a case growing out of the Dorr rebellion in Rhode Island. The action was a trespass for certain acts done by the defendant under authority of the charter government, after the declaration of martial law by that government. The plaintiff set forth the facts constituting the injury complained of, and the defendant pleaded the existence of a rebellion, the declaration of martial law, and that the acts complained of were done under orders of a military superior while martial law was in force. The plaintiff replied that the act declaring martial law was invalid, because the government which adopted it was not the legal government of Rhode Island. That the people of the State had previously adopted a new constitution, under which the legal government of the State was organized, and therefore the pretended declaration of martial law was the act of a defunct government and absolutely void. The issue thus formed raised the question: Which was the legal government of Rhode Island at the time the alleged trespass was committed?

After stating this to be the question presented by the case, the court, by C. J. Taney, say:

"Indeed, we do not see how the question could be tried and judicially decided in the State court. Judicial power presupposes an established government capable of enacting laws and enforcing their execution, and of appointing judges to expound and administer them. The acceptance of the judicial office is a recognition of the authority of the government from which it is derived. And if the authority of that government is assailed and overthrown, the power of its courts and other officers is annulled with it. And if a State court should enter upon the inquiry proposed in this case, and it should come to the conclusion that the government under which it acted had been put aside and displaced by an opposing government, it would cease to be a court, and be incapable of

pronouncing a judicial decision upon the question it undertook to try. If it decides at all as a court, it necessarily affirms the existence and authority of the government under which it is exercising judicial power."

Much reliance is placed upon some detached expressions in this opinion, which, unless considered with reference to the facts, might seem to conflict with the paragraph above quoted.

The Dorr government only pretended to exist for about one year, and in that year the acts were committed of which the plaintiff complained. In 1843 the people of that State adopted a constitution under which the government of the State was organized, which was universally admitted to be the legitimate government, supplanting all former government of the State; and after the new government was established, a government which was altogether free from question, Dorr was brought to trial for acts done by him—not under the government of the State existing when the indictment was found, but during the year when the question of legitimacy was in dispute between the Dorr government and the charter government. In this cause, under the new and unquestioned government, Dorr, in his defense, set up, as a fact, that the Dorr government was the real government, when, &c., and that he did the things charged to be treason in the capacity of governor, as he lawfully might.

The court, that is, the court of the new government, under the constitution of 1843, decided that the Dorr government, so called, was a fraud, and not a government. And it was of the decisions of this court that Chief-Justice Taney was speaking when he employed the language now relied upon to show that the supreme court of Louisiana, by recognizing one of the rival governments, now contending for supremacy in that State, can settle the question so as to preclude the United States from entering upon that field of inquiry.

The Chief-Justice, to guard against the use of his language now sought to be made, says:

"It is worthy of remark, however, when we are referring to the authority of the State decisions, that the trial of Thomas W. Dorr took place after the constitution of 1843 went into operation. The judges who decided that case held their authority under that constitution," &c.

Bearing these principles in mind, we come to consider the case decided by the supreme court of Louisiana, which is The State *ex rel.* P. H. Morgan *vs.* J. H. Kennard. Your committee know nothing of this case except from the opinions delivered by the judges therein, the record not being before us.

In November, 1872, Judge Howe, of the supreme court, resigned, and Governor Warmoth commissioned J. H. Kennard to fill the vacancy. After the Kellogg legislature was organized under Judge Durell's injunctions, enforced by United States troops, the house of representatives of that legislature pretended to impeach and suspend Governor Warmoth, whereupon Pinchback, who had been elected president of the senate in place of Lieutenant-Governor Dunn, deceased, which under the constitution made him lieutenant-governor, proclaimed himself acting governor in place of Warmoth, impeached and suspended. Pinchback afterward nominated Morgan, who was confirmed by the senate, to fill the same vacancy.

On the 15th of January, 1873, the Kellogg legislature passed an act entitled "An act to regulate proceedings in contestation between persons claiming a judicial office." This act provides that, if the incumbent shall refuse to vacate the office, the person "so commissioned shall have the right to proceed by rule. * * * Such rule shall be taken contradictorily with such incumbent, and shall be made returnable within twenty-four hours, and shall be tried immediately, without jury, and by preference over all other matters or causes depending in such court, and the judgment thereon shall be signed the same day of rendition.

"That either party to such rule may take an appeal from the judgment thereon, but such an appeal shall be applied for within one legal day from the rendition of the judgment on such rule, and shall be made returnable to the supreme court within two days.

"The appeal shall be taken up in the supreme court by preference over all other cases, immediately on the application of either party, and the judgment thereon shall become final after the expiration of one legal day, whether judicial or not."

Whatever else may be said of this law, it cannot be said that it was intended to delay the administration of justice. A decision rendered at 11.55 Saturday night, as it might be, would have to be appealed from within five minutes after its rendition, or the right of appeal would be gone forever.

But your committee, for the purpose of this report, will concede the constitutionality and validity of this act.

This act was approved on the 15th day of January, 1873, and on the next day the plaintiff in some subordinate court filed the following motion or rule:

"On motion of A. P. Field, attorney-general of the State of Louisiana, herein appear-

ing upon the relation of Philip Hickey Morgan, a resident of the parish of Orleans, and upon suggesting and giving the court to understand, and be informed as follows, to wit:

"That said P. H. Morgan was nominated by the acting governor of the State to the senate thereof, to fill the vacancy of associate justice of the supreme court of Louisiana; that his said nomination was confirmed; that he was commissioned thereto on the 4th of January, 1873; that he has taken and subscribed the oath required by law; that he is entitled and empowered to execute and fill the duties of said office according to law, and to have and to hold said office, with all the powers, privileges, and emoluments thereof;

"And on further suggesting that John H. Kennard, also a resident of said parish, unlawfully holds said office and executes the duties thereof, and claims the right to the said office, and to the powers, privileges, and emoluments thereof,

"*It is ordered*, That said John H. Kennard show cause, on Saturday, January 18, 1873, at 11 o'clock a. m., why it should not be forthwith adjudged and decreed that he is unlawfully holding and exercising the duties of said office of associate justice of the supreme court of the State of Louisiana, and the said P. H. Morgan be decreed and adjudged entitled thereto."

On the 18th of January, 1873, the defendant filed the following exception, to wit:

"And now comes John H. Kennard, and excepts that there has been no citation issued herein, or served on him in this case, and prays to be hence dismissed with costs."

On the same day the following exception and answer was also filed, to wit:

"Now comes John H. Kennard, defendant in this suit, and excepts to the rule herein taken by A. P. Field, attorney-general, on the relation of P. H. Morgan, on the ground that said proceeding by rule, in manner and form as set forth in said rule, is not authorized by law; and further, that the act of the 15th January, 1873, entitled 'An act to regulate proceedings in contestations between persons claiming a judicial office,' as to its first section is unconstitutional and void, not being in conformity to the title of said act; and further that said act is prospective, and does not apply to pending litigation. And further, that said act in relation to sections 2 and 3 is unconstitutional, as it authorizes proceedings which amount to a denial of justice. And further, that if said act is to be construed as applicable to suits instituted prior to its passage, it is retroactive and void, because in violation of article 110 of the constitution. In case these exceptions be overruled, and not otherwise, for answer to said rule this respondent avers that he was duly appointed by the governor of the State to the office of associate justice of the supreme court of the State of Louisiana, on the 3d day of December, 1872, vice W. W. Howe, resigned during the recess of the senate, and that on the same day he was duly qualified and took possession of said office, having complied with all legal requirements, and his term of office has not yet expired."

On the same day (Saturday, January 18, 1873), these exceptions were overruled by the court, and the case was continued for trial till Monday, the 20th January, 1873, on which day the defendant filed the following supplemental answer, to wit:

"Now comes in J. H. Kennard, and for further answer prays for a trial by jury, and pleads that the said act of the legislature under which the relator, P. H. Morgan, claims to proceed is null and void, as violative of section 1, article 14, of the Constitution of the United States, which forbids any State from making any law which shall abridge the privileges and immunities of its citizens, and prohibits any State from depriving any person of life, liberty, or property without due process of law, or to deny to any person, within its jurisdiction, the legal protection of its laws; and if said act is void, this court has no jurisdiction to proceed by rule in the manner and form as set forth in said rule."

On the same day the prayer for trial by jury was refused, the case was tried, and judgment entered for the plaintiff. The defendant immediately took an appeal.

The only question to be settled by this suit was whether Morgan, the relator, or Kennard, the defendant, was entitled to hold the office of associate justice of the supreme court in place of Howe, resigned; and the idea that in disposing of this single question the court had any authority or jurisdiction to determine as between Warmoth and Pinchback, neither of whom was a party to the cause, which of them was entitled to exercise the office of governor, and between two or three hundred persons, the Kellogg legislature, and as many more, the McEnery legislature, not one of whom was a party to the suit, which of the rival bodies was authorized to exercise the legislative power of that State, is too preposterous a proposition to require serious refutation.

The utmost that can be claimed for this decision is that the court recognizes the Kellogg government as a government *de facto*, which may be conceded without touching the question whether it has been established by a regular election or set up and established by the usurpation of the individuals composing it, sustained by the military forces of the United States.

The question we are considering is not a judicial question and no judicial court can determine it. The question is political in its character, and, so far as the United States

have to deal with it, must be determined by the political department of this Government. We must therefore investigate the facts, and no decision of any branch of a pretended State government can estop us in this inquiry.

The people of the State are about equally divided in sentiment in regard to these two pretended governments. The people of New Orleans, which is the seat of government, support the McEnery government, two to one; and it is believed that if Federal support were withdrawn from the Kellogg government it would be immediately supplanted by the McEnery government. The people of the State, as a body, neither support nor submit to either government. Neither government can collect taxes, for the people have no assurance that payment to one will prevent collection by the other government. Business is interrupted, and public confidence destroyed; and should Congress adjourn without making provision for the case, one of two things must result: Either collision and bloodshed between the adherents of the two governments, or the President must continue the support of Federal authority to the Kellogg government. The alternative of civil war or the maintenance by military power of a State government not elected is exceedingly embarrassing; and in the opinion of your committee the best solution of this difficulty is for Congress to order a re-election, and provide for holding it under authority of the United States; to the end that a government may be elected by the people, to which they will submit, or which, in case of disturbance, the United States can honestly maintain.

Your committee have prepared a bill which they believe will insure an honest election, and result in the establishment of a republican form of government in that State, and your committee recommend its passage.

We are aware that ordering an election in a State upon the ground that an election which has been held is void for fraud is an exercise of power which ought never to be undertaken by Congress without stern necessity. It will be said that if such power resides in Congress it may be exercised improperly. This is true. But the same may be said of every power conferred upon a government. The people, in adopting the Constitution of the United States, saw fit to confer upon the General Government authority to guarantee to each of the States a government republican in form. This undoubtedly confers the power to determine whether a particular State has a government, and, if so, whether it be republican in form. There is no doubt Congress might to-morrow, as a question of mere power, declare that the government of Massachusetts is not republican in form, and set up in its place a government which it might determine to be so. This would, of course, be a great abuse of this power. When a judge has jurisdiction to decide a cause, he has as much power to decide it wrong as right: and an erroneous judgment is as valid as any other, until vacated or reversed by competent authority. In exercising this power Congress should act with great caution and prudence. The clamor usually raised by those who are defeated in an election should not, and would not, induce Congress to interfere. Ordinarily, even a government elected by fraud, but going quietly into the exercise of power, and submitted to by the people, may better be left to fill its brief term than be interfered with by Congress. But when the frauds committed are so glaring and widespread as to create public discontent in the State, and the organization of two rival governments threatening civil war, and it is manifest that neither government has been fairly elected, this power of the National Government must be regarded as wise and salutary. It cannot be maintained that its prudent exercise violates the rights of the States, because the States, for their own protection and security, have conferred the power upon the National Government; and this Government cannot refuse or neglect to exercise it, in a proper case, without disregarding the obligation which the Constitution has devolved upon it. We think the melancholy condition of the people of Louisiana, who are substantially in a state of anarchy, makes it the duty of Congress to act in the premises.

Therefore your committee recommend the adoption of the following resolutions:

1. *Resolved*, That there is no State government at present existing in the State of Louisiana.

2. *Resolved*, That neither John Ray nor W. L. McMillen is entitled to a seat in the Senate, neither having been elected by the legislature of the State of Louisiana.

And your committee recommend the passage of the bill herewith reported.

MATT. H. CARPENTER.
JOHN A. LOGAN.
J. L. ALCORN.
H. B. ANTHONY.

VIEWS OF MR. TRUMBULL.

The undersigned, unable to agree to the recommendations and some of the conclusions of the majority of the committee, asks leave to present the following views:

He agrees with the majority that portions of the Louisiana election law are in conflict

with the constitution of the State; that Wharton was *de facto* secretary of state, and, as such, *ex officio* a member of the returning board; that under the statute the Warmoth-Wharton board was the legal and rightful board to canvass the official returns; that it was illegally restrained by United States District Judge Durell from making such canvass; that by the election law approved November 20, 1872, all previous returning boards were abolished; that the De Feriet-Wiltz board was authorized under that act to complete the canvass which had been begun under the Wharton board; that said De Feriet board did canvass the official returns, and the result was duly proclaimed by the governor December 4; that Herron ceased to be the secretary of state when Wharton was appointed and took possession of the office; that the Lynch returning board never had authority to examine the official returns, and never had any to examine; that neither Kellogg nor any of the persons returned as elected to State offices by the Lynch board were elected according to the official returns; that neither the Pinchback nor the Kellogg State government could have been set up, nor the persons returned by the Lynch board as elected to the legislature have assembled and organized as a legislature, but for the unauthorized and usurped authority exercised by Judge Durell, supported by United States troops.

On the contrary, that but for such illegal and unwarranted interference, the McEnery State government and legislature would have been peacefully inaugurated, and that there has been no decision of the supreme court of Louisiana declaring the Kellogg State government and legislature legal in any case over which said court had jurisdiction to make such decision. The undersigned cannot, however, agree, because a United States district judge, supported by United States troops, has, by usurpation, caused a governor and a legislature not elected by the people to be installed in power in a State, that such usurpation authorizes Congress to intervene and order a new election in the State when there is in existence in such State a governor, other State officers, and members of the legislature duly elected by the people. All that is necessary in such a case is for the Senate to recognize the legitimate legislature by admitting to his seat in the Senate the person they have chosen to represent the State, and to forbid the use of United States troops to carry into effect the void orders of a usurping judge. The whole trouble in Louisiana has grown out of the illegal interference of the United States authorities, civil and military, with the internal affairs of the State.

According to the official returns, the fusion State ticket, headed by McEnery for governor, received an average majority of about 10,000 votes, and a large majority of the persons elected to the legislature were of the same party; and but for the illegal interference of the United States authorities, as is stated in the report of the majority, the McEnery government would have been peacefully inaugurated.

How skillfully the plan was laid to overthrow the legitimate State government, set aside an election, and inaugurate the Pinchback and Kellogg administrations and legislatures, and how well Judge Durell was supported in all these revolutionary and illegal proceedings by other United States officials, will appear by reference to a few facts disclosed in the evidence. The legislature had been called by Governor Warmoth to assemble December 9; December 3 the following dispatch was sent from Washington:

DEPARTMENT OF JUSTICE, *December* 3, 1872.

S. B. PACKARD, Esq.,
United States Marshal, New Orleans, Louisiana:

You are to enforce the decrees and mandates of the United States courts, no matter by whom resisted, and General Emory will furnish you with all necessary troops for that purpose.

GEO. H. WILLIAMS,
Attorney-General.

This dispatch, so far as the evidence shows, was not responsive to any call for troops; there had been no resistance to any process of the United States courts, nor does it appear that any was threatened. R. H. Jackson, a captain in the First Artillery, United States Army, testified that he went to New Orleans on the night of December 5 with two batteries of his regiment and eighty-six men.

The same night, December 5, between 9 and 11 o'clock, Judge Durell, at his private lodgings, issued his order, which, for want of jurisdiction, was void, and entitled to no respect from anybody, directing the United States marshal forthwith to take possession of the State-house, to hold the same until the further order of the court, and prevent all unlawful assemblage of persons therein, having reference to the persons returned as elected to the legislature according to the official returns. Captain Jackson testifies that he took possession of the State-house at about 2 o'clock on the morning of the 6th, with instructions to take and hold it under the direction of the United States marshal, and to act in obedience to his orders. He further testified that he was not stationed in the State-house to prevent riots, but to hold the building, and that if a riot had occurred in

front of the building he would not have interfered. He posted two soldiers at the entrance door, who guarded it with crossed bayonets, and suffered no one to enter the building except by permission of the United States marshal, one of whose deputies was at all times present. These troops continued to occupy the State-house for more than six weeks, until January 21, and it is manifest, from the whole testimony, that they were not there to preserve the peace, but to carry out the illegal orders of Judge Durell, and prevent the legally elected members of the legislature from assembling and organizing.

Can it be that the Attorney-General sent his telegram, and that Captain Jackson was ordered to New Orleans with his batteries, in anticipation of the unauthorized orders of United States District Judge Durell to seize the State-house and prevent the legislature from organizing except with such persons as he should declare legally elected; or that the Attorney-General supposed it the duty of the Executive to support with the military power the decrees and mandates of United States courts issued without jurisdiction, and consequently void? In no conceivable case could a United States court or judge have jurisdiction to issue orders such as were promulgated by Judge Durell. As well might a United States district judge make an order to seize the Federal Capitol and prevent all members of Congress from entering the building except such as he should declare elected. Would the President direct General Emory to furnish the troops to execute such an order? He has no more right to aid the execution of an order of court, void for want of jurisdiction, than the judge has to make it. It is his duty to discriminate between the orders of courts which may be lawful and those which must necessarily be void for want of jurisdiction. Had the troops been withdrawn when the character of the orders they were enforcing was made known, it might be inferred that the Attorney-General did not intend they should be used for such a purpose; but they held possession of the State-house for more than six weeks.

The next telegram was from Casey, United States collector of the port of New Orleans, as follows:

NEW ORLEANS, *December* 6, 1872.

President GRANT:

Marshal Packard took possession of State-house this morning, at an early hour, with military posse, in obedience to a mandate of circuit court, to prevent illegal assemblage of persons under guise of authority of Warmoth's returning board, in violation of injunction of circuit court. Decree of court just rendered declares Warmoth's returning board illegal, and orders the returns of the election to be forthwith placed before the legal board. This board will probably soon declare the result of the election of officers of State and legislature, which will meet in State-house with protection of court. The decree was sweeping in its provisions, and if enforced will save the Republican majority and give Louisiana Republican legislature and State government, and check Warmoth in his usurpations. Warmoth's Democratic supporters are becoming disgusted with him, and charging that his usurpations are ruining their cause.

JAS. F. CASEY.

What a spectacle is this, to see a State legislature set up and made Republican by the usurped authority of a United States district judge.

The next dispatches are as follows:

NEW ORLEANS, *December* 6, 1872.

Attorney-General WILLIAMS, *Washington, D. C.:*

Returning board provided by election of '70, under which election was held, and which United States court sustains, promulgated in official journal this morning result of election of legislature: House stands 77 Republicans, 32 Democratic; senate 28 Republicans, 8 Democratic. Board counted ballots attached to affidavits of colored persons wrongfully prevented from voting, filed with chief supervisor.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *December* 9, 1872.

Hon. GEO. H. WILLIAMS,
Attorney-General, Washington, D. C.:

Returning board has officially promulgated in official journal this morning the result of the election for State officers. Kellogg's majority, 18,861.

S. B. PACKARD,
United States Marshal.

The returning board here referred to is the illegal Lynch board, which never had an official return before it. Lynch, in testifying before the committee, said:

"We took all the evidence we had before us, and our knowledge of the parishes and their political complexion, and we then decided.

"By Mr. CARPENTER:

"Q. You estimated it, then, upon the basis of what you thought the vote ought to have been?

"A. Yes, sir. That was just the fact, and I think on the whole we were pretty correct."

Much of what Lynch called evidence was shown to be newspaper reports, letters, and forged affidavits. Then followed in quick succession the following dispatches:

[Telegram.]

NEW ORLEANS, *December* 9, 1872.

Hon. GEO. H. WILLIAMS, *Attorney-General:*

Governor Warmoth has been impeached by vote of 58 to 6. Warmoth's legislature returned by his board has made no pretense of a session.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, LA., *December* 9, 1872.

Hon. GEO. H. WILLIAMS, *Attorney-General:*

Senate, by vote of 17 to 5, have resolved into high court of impeachment. Senator Harris elected president of the senate, Lieutenant-Governor Pinchback being now governor.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *December* 9, 1872.

Hon. GEO. H. WILLIAMS,
Attorney-General, Washington, D. C.:

Lieutenant-Governor Pinchback qualified and took possession of the governor's office to-night. Senate organized as high court of impeachment, Chief-Justice Ludeling presiding, and adjourned to meet Monday next. It is believed that all the Democrats, members of general assembly, will qualify and take seats to-morrow.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *December* 9, 1872.

We have the honor to transmit to your excellency the following concurrent resolution of both houses of the general assembly and to request an early reply:

"Whereas the general assembly is now convened, in compliance with the call of the governor, and certain evil-disposed persons are reported to be forming combinations to disturb the public peace, defy the lawful authority, and the State is threatened with violence: Therefore,

"*Be it resolved by the senate and house of representatives of the State of Louisiana in general assembly convened,* That the President of the United States be requested to afford the protection guaranteed each State by the Constitution of the United States when threatened with domestic violence, and that the presiding officers of the general assembly transmit this resolution immediately by telegraph or otherwise to the President of the United States."

Adopted in general assembly convened this 9th day of December, A. D. 1872.

P. B. S. PINCHBACK,
Lieutenant-Governor, and President of the Senate.

CHAS. W. LOWELL,
Speaker of the House of Representatives.

[Telegram.]

NEW ORLEANS, *December* 9, 1872.

President GRANT:

Having taken the oath of office and being in the possession of the gubernatorial office, it devolves upon me to urge the necessity of a favorable consideration of the request of the general assembly as conveyed in the concurrent resolution of this day telegraphed to you requesting the protection of the United States Government. Be pleased to send the necessary orders to General Emory. This seems to me a necessary measure of precaution, although all is quiet here.

P. B. S. PINCHBACK,
Lieutenant-Governor, Acting Governor of Louisiana.

This pretended legislature, made up of persons returned as members by the Lynch board, perfected its organization, impeached the governor, suspended him from office, and installed Pinchback in his place. All this was done on the same day and within a few hours, and that, too, in disregard of a statute of the State, which, as stated to the committee, provides that the officer sought to be impeached shall be summoned before a committee of the house of representatives; shall have permission to cross-examine witnesses that are brought against him; shall have citation of the witnesses he may desire to summon; that the house of representatives shall act only in case the committee report in favor of the impeachment; that if the committee report adversely to it, that is itself an acquittal, and the officer cannot ever be arraigned on the charges then reported on. No such proceedings were had in this case.

It may not be amiss to remark in this connection that each of the members of the Lynch board was immediately rewarded by Pinchback with a lucrative office, except Lynch, and his son was given an appointment.

While these revolutionary proceedings were being enacted, Judge Durell was busy fulminating new injunctions and restraining orders, and calling Governor Warmoth and his associates of the legal returning board before him to answer for alleged contempts of his void orders.

The Pinchback administration and legislature thus set up was so entirely without the moral support and respect of the people that it was in great danger of falling to pieces unless it could get the further support of the Federal administration backed by a larger military force. So well was this understood that Pinchback and United States officials at New Orleans kept the telegraph busy calling on the President for help and additional forces. The two batteries and eighty-six men under Captain Jackson were not deemed sufficient to protect Pinchback and his legislature from the just indignation of an outraged people. Hence the cries for help which were continually being sent to Washington. The following are specimens of some of these cries:

[Telegram.]

NEW ORLEANS, LA., *December* 11, 1872.

Hon. GEO. H. WILLIAMS, *Attorney-General:*

I have the honor to acknowledge the receipt of your dispatch. May I suggest that the commanding general be authorized to furnish troops upon my requisition upon him for the protection of the legislature and the gubernatorial office? The moral effect would be great, and in my judgment tend greatly to allay any trouble likely to grow out of the recent inflammatory proclamation of Warmoth. I beg you to believe that I will act in all things with discretion.

P. B. S. PINCHBACK,
Lieutenant-Governor, Acting Governor.

[Telegram.]

NEW ORLEANS, *December* 11, 1872.

President GRANT:

Parties interested in the success of the Democratic party, particularly the New Orleans Times, are making desperate efforts to array the people against us. Old citizens are dragooned into an opposition they do not feel, and pressure is hourly growing; our members are poor and adversaries are rich, and offers are made that are difficult for them to withstand. There is danger that they will break our quorum. The delay in placing troops at disposal of Governor Pinchback, in accordance with joint resolution of

Monday, is disheartening our friends and cheering our enemies. If requisition of legislature is complied with all difficulty will be dissipated, the party saved, and everything go on smoothly. If this is done the tide will be turned at once in our favor. The real underlying sentiment is with us if it can but be encouraged, Governor Pinchback acting with great discretion, as is the legislature, and they will so continue.

JAS. F. CASEY,
Collector.

[Telegram.]

NEW ORLEANS, 11, 1872.

Hon. GEO. WILLIAMS:

If President in some way indicate recognition, Governor Pinchback and legislature would settle everything. Our friends here acting discreetly.

W. P. KELLOGG.

[Telegram.]

NEW ORLEANS, 11, 1872.

President GRANT:

Democratic members of the legislature taking their seats. Most, if not all, will so in next few days. Important that you immediately recognize Governor Pinchback's legislature in some manner, either by instructing General Emory to comply with any requisition by Governor Pinchback, under joint resolution of legislature of Monday, or otherwise. This would quiet matters much. I earnestly urge this and ask a reply.

JAMES F. CASEY.

[Telegram.]

NEW ORLEANS, *December* 12, 1872.

President GRANT:

The condition of affairs is this: The United States circuit court has decided which is the legal board of canvassers. Upon the basis of that decision a legislature has been organized in strict conformity with the laws of the State, Warmoth impeached, and thus Pinchback, as provided by the constitution, became acting governor. The chief-justice of the supreme court organized the senate into a court of impeachment, and Associate Justice Tallifeiro administered oath to Governor Pinchback. The legislature, fully organized, has proceeded in regular routine of business since Monday. Notwithstanding this, Warmoth has organized a pretended legislature, and it is proceeding with pretended legislation. A conflict between these two organizations may at any time occur. A conflict may occur at any hour, and in my opinion there is no safety for the legal government, without the Federal troops are given in compliance with the requisition of the legislature. The supreme court is known to be in sympathy with the Republican State government. If a decided recognition of Governor Pinchback and the legal legislature were made, in my judgment it would settle the whole matter. General Longstreet has been appointed by Governor Pinchback as adjutant-general of State militia.

JAMES F. CASEY.

In reply to these appeals for help the Attorney-General answered as follows:

[Telegram.]

DEPARTMENT OF JUSTICE, *December* 12, 1872.

Acting Governor PINCHBACK,
New Orleans, Louisiana:

Let it be understood that you are recognized by the President as the lawful executive of Louisiana, and that the body assembled at Mechanics' Institute is the lawful legislature of the State, and it is suggested that you make proclamation to that effect, and also that all necessary assistance will be given to you and the legislature herein recognized to protect the State from disorder and violence.

GEO. H. WILLIAMS.
Attorney-General.

The following telegrams were sent to the President by the friends of the State government which was being subverted:

[Telegram.]

NEW ORLEANS, *December* 11, 1872.

The PRESIDENT OF THE UNITED STATES:

Under an order from the judge of the United States district court, investing James Longstreet, Jacob Hawkins, and others with the powers and duties of returning officers under the State election law, and charging them with the duty of completing the legal returns and declaring the result in accordance therewith, those persons have promulgated results based upon no returns whatever, and no evidence except *ex parte* statements. They have constructed a pretended general assembly, composed mainly of candidates defeated at the election, and those candidates, protected by United States military forces, have taken possession of the State-house and have organized a pretended legislature, which to-day has passed pretended articles of impeachment against the governor; in pursuance of which, the person claiming to be a lieutenant-governor, but whose term had expired, proclaimed himself acting governor, broke into the executive office under the protection of United States soldiers, and took possession of the archives. In the mean time the general assembly has met at the city hall, and organized for business with sixty members in the house and twenty-one in the senate, being more than a quorum of both bodies. I ask and believe that no violent action be taken, and no force used by the Government, at least until the supreme court shall have passed final judgment on the case. A full statement of the facts will be laid before you and the Congress in a few days.

H. C. WARMOTH,
Governor of Louisiana.

[Telegram.]

NEW ORLEANS, 12*th*, 1872.

His Excellency U. S. GRANT,
President United States:

Claiming to be governor-elect of this State, I beg you, in the name of all justice, to suspend recognition of either of the dual governments now in operation here until there can be laid before you all facts, and both sides, touching legitimacy of either government. The people denying the legitimacy of Pinchback government and its legislature simply ask to be heard, through committee of many of our best citizens on eve of departure for Washington, before you recognize the one or the other of said governments. I do not believe we will be condemned before we are fully heard.

JNO. McENERY.

[Telegram.]

NEW ORLEANS, *December* 12, 1872.

His Excellency U. S. GRANT,
President of the United States:

SIR: As chairman of a committee of citizens appointed under authority of a mass-meeting recently held in this city, I am instructed to inform you that said committee is about leaving here for Washington to lay before you and the Congress of the United States the facts of the political difficulties at present existing in this State, and further earnestly to request you to delay executive action in the premises until after the arrival and hearing of said committee, which is composed of business and professional men without regard to past political affiliations.

THOMAS A. ADAMS,
Chairman.

To these respectful appeals on behalf of the legitimate governor and people of Louisiana, asking to be heard before a usurping executive and legislature should be forced upon them, the President, through the Attorney-General and War Department, returned the following replies:

[Telegram.]

DEPARTMENT OF JUSTICE, *December* 13, 1872.

Hon. JOHN MCENERY,
New Orleans, Louisiana:

Your visit with a hundred citizens will be unavailing so far as the President is concerned. His decision is made and will not be changed, and the sooner it is acquiesced in the sooner good order and peace will be restored.

GEO. H. WILLIAMS,
Attorney-General.

[Telegram.]

WASHINGTON, *December* 14, 1872.

General W. H. EMORY, U. S. A.,
Commanding New Orleans, Louisiana:

You may use all necessary force to preserve the peace, and will recognize the authority of Governor Pinchback.

By order of the President:

E. D. TOWNSEND,
Adjutant-General.

The history of the world does not furnish a more palpable instance of usurpation than that by which Pinchback was made governor and the persons returned by the Lynch board the legislature of Louisiana; nor can a parallel be found for the unfeeling and despotic answers sent by order of the President to the respectful appeals of the people of Louisiana. This pretended legislature, installed in power by the aid of the United States Army, in pursuance of a void order of a United States district judge, proceeded to elect John Ray to represent the State of Louisiana in the Senate of the United States; and it is said the Senate must receive him because the supreme court of Louisiana has decided the Pinchback legislature to be the rightful legislature of the State, and that the Senate is bound to follow the decision of the State court as to what constitutes its legislature.

It is true, as a rule, that the Federal courts follow the decisions of the State courts in regard to the construction of their own constitution and laws; but it is not true that the legislative department of the Government follows the decisions of the courts upon political questions. The inquiry, what is the established government in a State, belongs to the political, and not the judicial power. The Senate, by the Constitution, is made the sole and only judge of the election of its members, who can only be chosen by the legislatures of the respective States. Ordinarily the body recognized in a State as its legislature would be held by the Senate to be the body authorized to elect a Senator; but when, as in the case of Louisiana, there are two bodies in a State, each claiming to be its legislature, and each of which has chosen a person to represent the State in the Senate, in deciding between the claimants the Senate must necessarily determine which body was the rightful legislature and had authority to make the election.

In view of the facts as shown to exist in Louisiana, the decisions of its courts in favor of the validity of the Pinchback legislature are entitled to no respect whatever. As has been already shown, that legislature was not elected nor brought into being by the people of the State, but owes its existence to the void proceedings of the United States court supported by military force. It was the creature of force and fraud. Its first act was to impeach and suspend the governor (Warmoth) and install Pinchback in his place. It then abolished one court and set up another in its place, and Pinchback appointed Hawkins, one of the Lynch returning board, judge of the newly established court. To give any consideration to the decisions of the court thus set up would be to aid the usurpation. Hawkins counts in spurious members of the legislature; that legislature makes a governor, who makes Hawkins judge, and Hawkins then decides the legislature to be legal.

The Morgan case, in which a majority of the supreme court judges went out of the record to express opinions upon the legal status of Pinchback as acting governor, and the persons acting with him claiming to be a State senate, was commenced before this same Judge Hawkins under laws passed by this pretended legislature. As to the invalidity and extraordinary character of those laws, and the shameful proceedings of a majority of the members of the supreme court in Morgan's case, I concur with what is said by the majority of the committee in their report. Could anything be more preposterous than to give validity to such proceedings? Had the supreme court of the State stood in

the way of this pretended legislature its judges would no doubt have been summarily impeached and suspended, as Governor Warmoth was. That a wholesome fear of such proceedings operated upon a majority of the members of that court to make them obsequious to the demands of the pretended legislature is inferable from the fact that they make haste, in advance of any case coming before them involving the validity of the legislature, to make known their sympathy with it, as appears from the following extract from the dispatch sent by United States Collector Casey to the President December 12: "The supreme court is known to be in sympathy with the Republican State government."

The proper tribunal to decide between the contending legislatures in Louisiana is the Senate of the United States in passing upon the admission of the Senators by them respectively chosen.

The Supreme Court of the United States, in the case of Luther *vs.* Borden, say:

"When Senators and Representatives of a State are admitted into the councils of the Union, the authority of the Government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the Government, and could not be questioned in a judicial tribunal."

The credentials of William L. McMillen are signed by Mr. McEnery as governor of the State, with the seal of the State attached. He was elected by what is known as the McEnery legislature, which, including Senators holding over, consisted of a quorum in each branch of the persons elected according to the official returns as canvassed by the De Feriet board. The result of that canvass was duly proclaimed by Governor Warmoth, together with the list of the names of the persons elected to the senate and house of representatives, certified by Jack Wharton, who was at the time the acting secretary of state. The official returns also show that McEnery was elected governor by some 10,000 majority. These returns were before the committee, and their tabulation, showing the results above stated, were proven to be correct. It is true the members of the McEnery legislature did not meet at the time and place fixed in the governor's proclamation, and the facts show that it was out of their power to do so, for the reason that the Mechanics' Institute, in which they were called to assemble, was then occupied by United States troops, acting under the orders of a United States marshal in the execution of a void order of a United States court, which prohibited their assembling and organizing as a legislature in said building. The fact that when thus prevented from assembling in the Mechanics' Institute the members got together as soon as practicable in another building in the same city and proceeded to organize cannot vitiate their proceedings any more than if the Mechanics' Institute had burned down before the time for assembling had arrived. It is difficult to conceive upon what principle McMillen is to be refused his seat, unless the election in Louisiana in November last be declared void, and Louisiana to be without a State government, propositions to which the undersigned cannot give his assent. He believes the De Feriet board had color of authority at least to make the canvass of the returns for the legislature; that Wharton was *de facto* secretary of state at the time, and the proper person to make out the list of members on which the legislature is organized according to the laws of the State; but whether this were so or not is not perhaps material, because the official returns from the parishes were before us, and we know that the results at which the De Feriet board arrived were substantially correct. It is the fact that certain persons received a majority of the votes cast; that is of the substance of the election. The canvass of the returns is but machinery, and whoever receives a majority of the votes polled at an election for an office ought not to be deprived of the benefit of it unless in obedience to some positive statute.

It is, however, said by a majority of the committee that the election of November 4 was so tainted with fraud as to render it wholly void, and they recommend the passage of a law for holding a new election under the authority of Congress.

If it were admitted, as it is not, that Congress has authority to inquire into the fairness and regularity of a State election, it is denied that there was any such fraud in the late Louisiana election as would justify setting it aside. It was confessedly one of the most quiet and peaceful elections ever held in the State, and the evidence shows that it was substantially free and fair.

The vote polled was 20,000 larger than ever before cast in the State, and against more than two-thirds of it no complaint of unfairness is even alleged.

S. B. Packard, United States marshal for the district of Louisiana, was chairman of the Republican State executive committee, and his office in the custom-house was the headquarters of the organization of which he was one, if not the leading spirit. He appointed from one to four special deputy marshals in every parish, and upward of six hundred in New Orleans, who were to be at the polls. Some of them served for seventy days; and he made requisitions on the Attorney-General, previous to the election, for the money to pay deputy marshals and United States supervisors. Under the law, one of the two United

States supervisors appointed by the court is selected from each party, but in appointing his special deputies United States Marshal Packard confined himself exclusively to his own party, so far as the testimony shows. This United States marshal and chairman of the Republican executive committee issued instructions to the Republican United States supervisor in each parish in regard to the supervision of the vote for State and local officers, but gave no such instructions to the supervisor appointed on the fusion side. With all the sources of information which the hundreds of his subordinates scattered through the State, and his position as United States marshal and chairman of the State Republican executive committee, afforded him, Packard testified before the committee that "in a majority of the parishes, in my judgment, the election was as fair as you usually have it in any State election.

"Rapides and Natchitoches, I should say, were the two worst. Then I would add Madison, Caddo, and Bossier, and East Baton Rouge; a portion of the returns for West Baton Rouge.

"A. These parishes I have named were the worst cases.

"Q. Seven of these cases?

"A. Yes, sir. There is also the parish of Assumption, which I believe to be a Republican parish, which went about 700 Republican in 1870, is returned differently.

"Q. I want to know about how many there were in which there were notorious charges of fraud, such as are not usually made in elections?

"A. That is the number, or about the number. It would increase the number, perhaps, ten or fifteen, if I were to add those in which I believed the returns were not in accordance with the facts."

The State is divided into fifty-six parishes, from only about twenty of which, containing less than one-third of the population of the State, frauds were even reported, and these reports were not supported by the direct testimony of a single witness before the committee, unless proof that the places of registration and of voting were established at inconvenient places in two or three parishes should be regarded as evidence of fraud. The only evidence to sustain the charges of fraud made by the Republicans were the opinions of witnesses who took an active part in the election on the Republican side, and were disappointed in the result, or *ex parte* "affidavits, the statements of supervisors of election, appointed under the act of Congress, letters, and verbal statements," which were laid before and made to the Lynch returning board, and upon which the committee have already reported that the Lynch returning board, "with the sort of evidence which was before them, had no power under the law of the State to investigate these charges of fraud and injury, or act upon their convictions of wrongs that had been suffered."

It was also in evidence before the committee that many of the affidavits before the Lynch board for the purpose of proving unfairness in the election, and upon which that board acted, were forged, and that others were triplicated.

No returns were made to the governor, as required by law, from two parishes, and the returns were irregular from two others. Informalities also existed in some few other parishes or parts of parishes, but not so as to affect the general result, which for State officers, according to the official returns, showed an average majority of over 10,000 for the fusion ticket. These returns were produced before the committee, and the tabulation as contained in the evidence, page 81, proved to be correct.

It has been said that the colored voters were all Republicans, that the colored population of the State outnumbers the whites, and that therefore if the election had been fair the Republican ticket must have succeeded; but the census of 1870 shows that there were in the State one hundred and fifty-three more white than colored males over twenty-one years of age; and it is also in evidence that from eight to ten thousand colored persons voted the fusion ticket, while the number of whites who voted the Republican ticket is not believed to have exceeded half that number.

That fraud was practiced in some of the parishes, that irregularities existed in others, may be admitted; and still, in the absence of any legitimate evidence to establish those frauds, or of any sort of complaint even against the fairness of the election in more than two-thirds of the State, the undersigned cannot admit that such a case exists as would authorize the interference of Congress with the election in any form, and his conclusion is, that by the admission of McMillen to his seat in the Senate, and the recognition thereby of the McEnery legislature as the legitimate legislature of the State, the peace of Louisiana will be speedily restored, and effect given to the fairly expressed will of her people.

LYMAN TRUMBULL.

VIEWS OF MR. MORTON.

Article 46 of the constitution of Louisiana is in the following words: "Returns of all elections for members of the general assembly shall be made to the secretary of state." This leaves it to the legislature to provide the necessary machinery for the conduct of *elections* and the organization of the new legislature after each election.

In March, 1870, the necessary machinery was provided in the registration and election law; and the latter law requires all returns to be made to the governor, and to be by him laid before the returning board, of which the secretary of state is *ex officio* a member, which shall count the votes, and that the board shall then deposit the returns with the secretary of state, as also a copy of their count or finding.

Article 48 of the constitution provides, in regard to the election of governor and lieutenant-governor, that "the returns of every election shall be sealed up and transmitted by the proper returning officers to the secretary of state, who shall deliver them to the speaker of the house of representatives on the second day of the session of the general assembly then to be holden. The members of the general assembly shall meet in the house of representatives to examine and count the votes."

In this regard also the law provides a somewhat circuitous route by which the returns of the election shall reach the secretary of state, yet apparently with as little objection, in a constitutional point of view, as in the case of the members of the general assembly. The returns in both cases reach the secretary of state through the governor and the returning board. The constitution provides that the legislature shall count the votes for governor and lieutenant-governor, but makes no provision for counting them as to other State officers or members of the legislature, and leaving all that machinery to be provided by statute.

The act of 1870 provides for supervisors of registration in the parishes, and commissioners of election to be appointed by the supervisors, and the returns of the election in the several parishes to be sent to the governor, to be by him laid before the returning board, and by the returning board, together with the result of their finding, deposited with the secretary of state. These provisions are held by the courts in Louisiana to be a compliance with the constitutional provisions, and I see no objection to them on that score. The law makes the governor, with other members of the returning board, "returning officers" under the constitution, to which I can see no objection.

For a statement of the facts attending the election on the 4th of November, and the counting of the votes, I refer to the preliminary report already made by the Committee on Privileges and Elections in regard to the election of Presidential electors. By the law of 1870 the governor, lieutenant-governor, secretary of state, and John Lynch and T. C. Anderson by name, were constituted a board to count the votes. Lieutenant-Governor Pinchback and Mr. Anderson, having been candidates for Congress, were, by a provision of the law, prevented from acting on the board, and a struggle arose between Governor Warmoth on the one side, and Mr. Lynch, and Herron, the acting secretary of state, on the other, to fill the vacancies. The governor attempted to depose Herron by appointing Jack Wharton in his place, and claimed that by his vote and Wharton's they had elected F. H. Hatch and Durant Da Ponte to fill the vacancies, while Lynch and Herron claimed that by their votes they had elected James Longstreet and Jacob Hawkins. On the next day, the 15th of November, a suit was commenced in the eighth district court, before Judge Dibble, in the name of the State, on the relation of Lynch and others, to restrain Wharton, Hatch, and Da Ponte from acting as members of the returning board, upon which a preliminary restraining order was granted. On the next day, the 16th, a suit was commenced in the same court by Governor Warmoth to restrain Herron, Hawkins, and Longstreet from acting as members of the board, upon which a like restraining order was granted. Both cases came on for hearing upon the 19th of November, when the court decided that Lynch, Herron, Hawkins, Longstreet, and Governor Warmoth constituted the legal returning board, dismissed the Warmoth suit, and enjoined Wharton, Hatch, and Da Ponte from assuming to act as members of the board. Two days afterward Judge Dibble, the clerk, and the sheriff were forcibly ejected from the court-room, and Judge Elmore took possession of the bench, having been commissioned that morning as judge by Governor Warmoth, but the votes for whom had never been counted by any person having authority. Upon the 3d of December following Judge Elmore annulled the judgment rendered by Judge Dibble and dismissed the suit. This case was finally appealed to the supreme court of the State, in which it was decided, on the 23d day of January, that the legal returning board, on the day when the case was decided in the lower court, was composed of Governor Warmoth, John Lynch, F. J. Herron (acting secretary of state when the suit was commenced), James Longstreet, and Jacob Hawkins; that Governor Warmoth had no power to remove Herron and appoint Wharton secretary of state; and that Wharton, Hatch, and Da Ponte had no authority whatever.

On the 16th of November, Kellogg, who claimed to have been elected governor, commenced a suit in the circuit court of the United States before Judge Durell, for the ostensible purpose of perpetuating testimony, in which he alleged that he had been a candidate for governor before the election, and had been deprived of the office by the wrongful denial of the right to vote of 10,000 persons on account of their race, color, and previous condition of servitude. Upon the filing of the bill Judge Durell granted an order restraining

Wharton, Hatch, and Da Ponte from acting as members of the returning board, opening and counting the votes, or in any way meddling with the election returns. On the 6th of December he decided the case, holding that Lynch, Hawkins, Longstreet, and Bovee, secretary of state, together with Governor Warmoth, constituted the legal returning board, and enjoining Wharton, Hatch, and Da Ponte from assuming to act as members thereof. On the day previous he had issued an order to the United States marshal to take possession of the State-house, and prevent any illegal assemblage, which the marshal executed by summoning as a posse comitatus a detachment of United States troops. On the 6th of December, Armstead, who claimed to have been elected secretary of state, commenced a suit before Judge Elmore to restrain the members of the Lynch board from counting the votes and making returns in the absence of the official returns of the election. The restraining order was granted, but the case was removed the next day to the circuit court of the United States by certiorari. On the 7th of December, Antoine, who claimed to have been elected lieutenant-governor on the same ticket with Kellogg, commenced suit in the circuit court of the United States, upon which Judge Durell granted an order restraining all persons from taking part in organizing the legislature whose names were not on the lists issued by the secretary of state, and returned as elected by the Lynch board.

In the month of March, 1872, the legislature passed a new election act, which assumed to abolish the returning board, as created by the law of 1870, and authorized the State senate to elect a board of five from outside of its own members, which act Governor Warmoth kept in his possession without signing until the 20th of November, and then signed and published it as a law; but the supreme court of the State, in the case before referred to, decided that this law did not have the effect to abolish the returning board, as created by the law of 1870, until after the returns for the election of 1872, which had been held before the bill was signed, had been counted and the new legislature organized. On the 21st of November, Governor Warmoth, assuming that the act he had signed the day before had abolished the returning board as created by the law of 1870, and that he had power under the constitution to fill vacancies, appointed Mr. De Feriet and four other persons to act as a returning board, to count the votes for State officers and members of the legislature. He placed in their hands for that purpose what purported to be the official returns of the election, upon which they proceeded to count the votes and make proclamation of their finding as to members of the legislature.

Mr. Bovee was elected secretary of state in 1868, to hold his office for the same term as the governor, and until the meeting of the regular session of the legislature in 1873. On the 21st day of August, 1871, Governor Warmoth assumed the power to suspend Mr. Bovee from office and appoint in his stead F. J. Herron as acting secretary of state during the suspension of Mr. Bovee. In March, 1872, Mr. Bovee commenced a suit to assert his title to the office, which was appealed to the supreme court, and decided in his favor on the 2d December, 1872; but he was not restored to the actual possession of the office until the 6th December.

On the 20th day of November, in the exercise of the power reposed in him by the constitution, Governor Warmoth issued a proclamation convening the legislature in extra session on the 9th of December, at the Mechanics' Institute, in the city of New Orleans, then used and known as the State-house. By the law the house consisted of one hundred and eight members and the senate of thirty-six members, and, under the construction of the clause in the constitution in regard to a quorum, it was held that it required a majority of the whole number of which each house should properly consist to constitute a quorum; that is, 55 in the house, and 19 in the senate.

The members of the house held their office for two years, and of the senate for four years; one-half of the senate to be elected every two years. Owing to several causes there were but fifteen senators left of those holding over from the election in 1870, and twenty-one were to have been elected at the late election. Mr. Pinchback, who had been elected a senator in 1868, and whose time would expire on the 4th November, 1872, had, on the death of Lieutenant-Governor Dunn, in December, 1871, been elected president of the senate and lieutenant-governor of the State in accordance with the law.

The act to provide for filling a vacancy in the office of lieutenant-governor is in these words: "In case of vacancy in the office of governor the lieutenant-governor shall be governor; in case of vacancy in the office of lieutenant-governor the senate shall elect a president, who shall be lieutenant-governor."—(Sec. 1580 rev. stat., act of 1865.)

There was a dispute in regard to the character of his office, it being held by one party that he was only acting lieutenant-governor by his election as president of the senate, and by the other that he actually became lieutenant-governor, and would continue to hold that office after his term as senator had expired. It is not necessary to go into this question, as it has since been decided by the supreme court of the State that, by such election, Mr. Pinchback became lieutenant-governor, and his office as such did not expire with his term of senator; that he continued legally to perform the duties of lieuten-

ant-governor up to the period when the term of Lieutenant-Governor Dunn would have expired had he lived.

By the law of the State the legislature was to be organized by the secretary of the senate and the clerk of the house of representatives of the last legislature. The secretary of state is directed to furnish to those officers a list of the members of the senate and of the house returned as elected by the legal returning board, and no person is entitled to take a seat in either house whose name is not found upon such list.

On the day fixed for the meeting of the legislature in extra session, Governor Pinchback appeared in the senate, took the chair and proceeded to the organization of that body. The secretary of the last senate produced a list from the secretary of state of the newly elected senators, and fourteen appeared and were sworn in; two others appeared the next day, and were admitted to their seats upon taking the oath; and these with fourteen of the senators holding over made thirty present on the second day. Of the sixteen new senators, seven were returned by both the Lynch and De Feriet boards, and about their election there was no dispute. Four others were returned by the Lynch board from strong Republican districts, in which the regular official returns had been thrown out by the De Feriet board, in whole or in part, and about whose actual election by the votes cast there can hardly be any dispute.

The house of representatives was organized by the clerk of the last house, who had a list of the members from the secretary of state returned as elected by the Lynch board; and representatives thus returned as elected appeared and were sworn in to the number of seventy-six. Of this number, forty-five were returned as elected by both the Lynch and De Feriet boards, and about their election there is no dispute, leaving thirty-one who were returned by the Lynch board only, whose election was disputed by the De Feriet board.

The house then proceeded to the election of a speaker and other officers, and the two bodies were declared to be duly organized according to law.

Within three days after this eleven members seceded from the house, and six members from the senate, who proceeded to Lyceum Hall, and there, in connection with a number of persons who had been returned by the De Feriet board, attempted to organize a new legislature, which we will disignate as the "McEnery legislature." This pretended legislature was organized by the admission of persons who were not returned as elected by any person having authority, and in the absence of those lists of elected members to be issued by the secretary of state as expressly required by the law. It did not meet until three days after the time fixed in the governor's proclamation for the assembling of the legislature, nor at the place fixed in that proclamation; and it has no semblance of legal authority in any respect, but rests entirely upon the unauthorized and unofficial declarations that the persons composing it were elected at the election on the 4th of November last.

But I do not think it necessary to pursue its history any further, as in my opinion it could not under any circumstances come to be regarded as the legal legislature of the State. If, after the legal organization of the Senate and House of Representatives of the United States at the beginning of a new Congress, even a majority of the lawfully elected members of each body should secede from it and go to the city hall and there attempt to organize a new Congress, it will not be pretended that such new organization could legally become the Congress of the United States. By such act they might disable either House from doing business; but it would be absurd to say that the new one could be received as the legal Congress. The proposition that, after a legislature has been completely organized, it is in the power of seceding members to form a new one which, in contemplation of law, can take the place of the first, is so manifestly unreasonable that I dismiss the claim of the McEnery legislature from further consideration.

After the legislature became duly organized, as already stated, it was invested with power expressly conferred by the constitution of Louisiana to determine the qualifications and elections of its own members. This is in its nature an exclusive power. One house cannot divide it with the other, nor can the exercise of it be controlled by courts. From that time each house has the exclusive control over its membership, whether in the retention of old members or in the admission of new ones. If in the original organization a number of persons were admitted as members who had not been legally elected, but whose names were on the list of persons furnished by the secretary of state returned as elected by the proper returning board, their seats were liable to contest, and such contest could only be determined by the house of which they claimed to be members; and under no circumstance could a court inquire into the expulsion of a member of either house or the admission of a new one. Such a power has never been recognized in any State or by any Federal court in regard to Congress. If a quorum in each house, who were on the list furnished by the secretary of state as having been returned as elected by the legal returning board, take their seats and proceed to the work of organization, such organization must in contemplation of law be held to be legal.

The action of Congress in regard to Georgia is no exception to this principle. That was put upon the ground that Georgia had not been fully reconstructed, and that the fundamental conditions upon which reconstruction was to take place, as prescribed by Congress, had been violated before the work of reconstruction had been completed. But this precedent will not apply to the case of any State which has been fully received into the Union and occupies the situation of other States. This principle that each house has the exclusive jurisdiction over all questions touching the election and qualification of its members, and is to determine for itself whether a lawful quorum is present to do business, is so well established that it has been holden by the courts in all the States in which the question has arisen, as well as by the Supreme Court of the United States, that the validity of a statute cannot be impeached by a plea that members took part in its enactment who were not lawfully elected, or that it was passed in the absence of a lawful quorum, or that its enactment was procured by bribery, or attended by other gross irregularity.

After the organization of the two houses was completed, the house of representatives passed a resolution impeaching Governor Warmoth of high crimes and misdemeanors, of which the senate was notified, and then a joint resolution was passed by both houses suspending him from office pending the trial. This devolved the duties of governor, under the constitution, upon Lieutenant-Governor Pinchback. Early in December, Lieutenant-Governor Pinchback, acting as governor, nominated to the senate for confirmation P. H. Morgan for associate justice of the supreme court to fill the vacancy occasioned by the resignation of W. W. Howe. The nomination was confirmed; but J. H. Kennard, who had been previously appointed by Governor Warmoth to fill the vacancy occasioned by the resignation of Howe and not confirmed by the senate, refused to surrender his seat, and a proceeding was instituted by Morgan to get possession of the office, which was carried by appeal to the supreme court, and on the 31st day of January the supreme court decided that Pinchback was lieutenant-governor, and by the impeachment of Governor Warmoth was legally acting as governor; that his nomination of Morgan to the senate for associate justice was in accordance with law; that the senate by which Morgan was confirmed was the legal senate of Louisiana, and that Morgan was entitled to take his seat upon the bench. The legislature during its extra session, which terminated on the 6th of January, passed a number of laws of a general character, which went into operation and were recognized by the courts as being the laws of the State, and among them one abolishing the seventh and eight district courts and creating the superior district court of New Orleans, which court was duly organized and is in the active discharge of its duties. A few minutes after the adjournment of the extra session the regular session began, as provided by the constitution of the State, and the legislature proceeded to the business of the session.

Under the laws of Louisiana the life-time of a legislature, like that of a Congress, is two years, and when once it is organized that organization extends throughout the period. The organization at the beginning of the extra session rendered any subsequent one unnecessary, and at the opening of the regular session the members who had been admitted at the extra session appeared and took their seats without further qualification, and by the rules the unfinished business of the extra session was continued in the regular session as if no interregnum had taken place. Should the President convene an extra session of Congress in the month of March, the organization of the House of Representatives then made would continue through the Congress just as if it was made at the beginning of the regular session.

On the 14th of January, an act was passed to promote the speedy trial of contests for judicial offices, the validity of which came before the supreme court in the case of Morgan *vs.* Kennard, and in regard to which the court held that while they could not determine judicially the persons who composed the legislature, yet that they could take judicial notice of the body constituting the legal legislature, and that the law in question was passed by the legal legislature. This legislature has continued in session up to this time engaged in general and special legislation, the validity of which is recognized by all the courts of the State and generally by the people.

Louisiana has a constitution which has been ratified by the people; a code of laws enacted by her legislature from time to time; a general system and body of law which is recognized and administered by her courts; a supreme court in full operation, district and subordinate courts discharging their duties without obstruction in every part of the State. She has her full complement of parish and local officers, who are performing their duties without resistance or interruption. She has a legislature which was organized under the forms of law, the members of which were declared elected by a tribunal which has been pronounced by the supreme court the lawful one for that purpose, and this legislature has been expressly recognized by the supreme court as being the lawful legislature. She has an acting governor who has been declared elected by the legislature and installed in office under the forms of law. It cannot be said, therefore, that Lou-

isiana has not a State government, and that the government is not in all outward aspects legal and normal.

The late insurrectionary States at the end of the war were without governments of any kind. They were without governors, legislatures, courts, State or subordinate officers; and the United States had the power to provide for the reconstruction of the State governments, and it was their duty to do so. The broad difference between the condition of Louisiana at present and the insurrectionary States at the end of the war must be comprehended by all. The interference of the United States at that time, and undertaking the work of reconstruction, was a constitutional and political necessity. The Constitution declares that the United States shall guarantee to each State a republican form of government, and, by generally received construction, this does not limit the power of Congress to a mere inquiry as to the form, but it is construed to mean as if it read, "the United States shall guarantee to each State a government, republican in its form." Where there are two rival governments in a State, Congress must first ascertain which is the legal government before it can determine the question whether it is republican in form; and if there be no legal actual government, it is impossible that it should be republican in form. But it is not every irregularity in a State government that will destroy its existence or impair its republican or legal character. A State government consists of too many constituent parts to say that the absence of the governor or the presence of a fraudulent one will destroy its existence, and the Constitution and laws have provided the machinery by which the intruder may be expelled and the lawful governor put in his place. Should the legislature be broken up by the secession or resignation of a majority of its members leaving it without a quorum—which has happened in many of the States—that would not destroy the existence of a State government; or, if it be irregularly or fraudulently organized by the admission of persons as members who were not elected, it could not be said to have destroyed the existence of the State government. It is hardly necessary to consider how many of the constituent parts of a State government must disappear before the government ceases to exist. The presence of governors and State officers who secured their offices by fraud has occurred many times in our political history, and has never been held to have destroyed the existence of a State government or its legal character. And we know that there have been numerous instances where State legislatures have been broken up by the resignation of members, or by what is commonly called "bolting," and yet it was never claimed that such a result destroyed the State government or took away its legal character.

The theory of our system is that every State government possesses the power and machinery to correct the wrongs and frauds within itself, practiced under color of or in open violation of its own laws, and that the decision of its own tribunals, created by its constitution and laws for such purpose, must be received as final. When the constitution of a State provides that each house of its legislature shall be the judge of its election and qualification of its members, full faith and credit must be given to their action; and should the Government of the United States go behind their action to inquire whether the members have been lawfully elected to the legislature, their independence would be wholly destroyed and the validity of their action made to depend upon the will of Congress. So, when the laws of a State have constitutionally created a returning board to ascertain who are elected State officers and members of the legislature, if Congress may go behind the decision of that board and inquire whether they had the returns before them, and whether they were acting in accordance with the laws of the State, the election of State officers and members of the legislature would be placed absolutely under the control of Congress.

The Constitution says that "the Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years." The manner of constituting the legislature is left absolutely to each State, and the question of its organization must be left to be decided by such tribunals or regulations as are provided by the constitution and laws of the State; and the only question about which the Senate may inquire in determining the admission of Senators is whether they have been chosen by the legislature of the State—that legislature recognized by the State, or whose organization has been accepted by other departments of the State government. Under our complex system of government all questions of the organization of State governments, under their own laws, must be left to the decision of the tribunals in such States created for that purpose; and when such decisions have been made they must be accepted by the Government of the United States in their dealings with such States. It is no answer to this to say that in a particular case such tribunals will or have decided wrongfully. The Government of the United States has no right to review their decisions so long as the State possesses a government republican in its form.

The doctrine that all questions of election arising exclusively under the constitution and laws of a State must be left to the settlement and determination of the proper tribunals created by the State for the adjustment of such matters, was distinctly recognized

by the Supreme Court of the United States in the celebrated case of Luther *vs.* Borden, growing out of the attempt in the State of Rhode Island to overturn the old charter government and establish a new one in its stead. In that case the Supreme Court said:

"The point, then, raised here has been already decided by the courts of Rhode Island. The question relates altogether to the constitution and laws of the State; and the well-settled rule in this court is that the courts of the United States adopt and follow the decisions of the State courts in questions which concern merely the constitution and laws of a State. Upon what ground could the circuit court of the United States, which tried this case, have departed from this rule and disregarded and overruled the decision of the courts of Rhode Island? Undoubtedly the courts of the United States have certain powers under the Constitution and laws of the United States which do not belong to the State courts. But the power of determining that a State government has been lawfully established, which the courts of the State disown and repudiate, is not one of them. Upon such a question the courts of the United States are bound to follow the decisions of the State tribunals."

But the reason for the rule in Luther *vs.* Borden is much stronger in this case than in that. In that case there was an attempt to set up a new constitution over the old charter under which it was claimed that a new government had been organized throughout, involving a new supreme court, as well as legislature and State officers. But in Louisiana there is but one constitution, and but one supreme court, which is recognized by all parties, and no attempt made to set up another in its stead, and the only question is as to who were elected State officers and members of the legislature under the recognized constitution and laws of the State, of which the supreme court must necessarily be the final arbiter.

There is no impeachment of the supreme court of Louisiana presented to the committee or to the country. All its members but one were placed upon the bench in 1868, before the present troubles arose, and hold their office for four years longer; and although imputations have been cast upon its action, I know of no foundation for them, and it is not legitimate for Congress to make an inquiry into its motives. The power and duty conferred upon the United States by the fourth article to guarantee to every State in the Union a republican form of government is political in its character, and not subject to revision by the judiciary; but when, upon inquiry, it is ascertained that a State has an existing government in active operation, which is not obstructed by violence, in which each department is mutually recognized by the other, and which is republican in its form, there is no foundation for the interference of Congress, and no condition to which its power can attach; and although its officers may have been elected by fraud or installed without election, yet all questions in relation to them must necessarily arise under the constitution and laws of the State, and, under the decision in Luther *vs.* Borden, be referred for determination to the tribunal of the State.

This whole affair, on both sides, is unfortunate and painful, and if Congress could, without exercising a dangerous power and establishing a perilous precedent, set aside the election and provide for a new one, with security that it should be fair, it would be far more satisfactory to the people of the whole nation. Murder is the highest crime; but it is not every court that has jurisdiction to punish it; and one court cannot assume such jurisdiction upon the ground that another, to which it has been granted, will not properly exercise it; and Congress has not the jurisdiction to examine and redress every great wrong that may take place in a State. Where, by the constitution and laws of a State, legal remedies are provided for the redress of all wrongs that may take place in regard to elections, it would be inconsistent with the independence and integrity of the State governments for the United States to interfere and assume jurisdiction upon the ground that the State tribunals have acted wrongfully and fraudulently, or will so act. The Government of the United States is not a Don Quixote, going forth to hunt up and redress all the wrongs that may be inflicted upon the people in any part of the country; but is a Government limited and restrained in its jurisdiction by the charter of its creation, and that charter distinctly recognizes the existence of State governments to be constituted legally by the States themselves, subject only to the provision of the higher law that they shall be republican in form. This doctrine in no wise recognizes the blood-stained theory of State sovereignty, which has been the evil spirit in our political system, and to which the present troubles in Louisiana may be traced back, but springs from the great fact that the States have a vast body of rights distinctly guaranteed and recognized by the Constitution of the United States, and that among these is the right to constitute their own legislatures, and determine by their own tribunals the legality of their organization.

This great power to guarantee to each State a republican form of government is intended only for the highest and most solemn occasions. If it is invoked for every disorder in a State, it must result in the absorption of the State governments and subvert the whole theory and plan of our political institutions. While we are a nation, in which alone the

sovereignty resides, yet local self-governments which preceded the Constitution, and are recognized and continued by it as a part of the great plan of political salvation, are indispensable to our liberty, progress, and happiness, and must be preserved. It should be exercised only upon well-defined principles, in cases coming clearly within their limits, and with all the more caution because it is political in its character, and the use or abuse of it cannot be reviewed by the courts. While it would be imprudent to attempt to define the cases that come within its scope, it may be safely said that it does not comprehend a disorder in a State arising under its own constitution and laws, for which those laws provide remedies, a State in which there is profound peace, and in which the State government is republican in its form, and discharging its functions in every department without interruption. Even in cases that come within its scope it should not be exercised except in the last resort, and the States should be left to work out their own relief and reformation as long as there is any hope.

There is a government in Louisiana. In all outward aspects it is legal and normal. Profound peace prevails throughout the State. The government, through the courts and through its legislature and administrative officers, is operating without interruption or hindrance. Should Congress determine to undertake the work of reconstruction, it must first overturn an actually existing government which is republican in its form.

The conduct of Judge Durell, sitting in the circuit court of the United States, cannot be justified or defended. He grossly exceeded his jurisdiction, and assumed the exercise of powers to which he could lay no claim. The only authority he had in the matter grew out of the act of Congress of 1870 to enforce the fifteenth amendment, and the act amendatory of that, passed in 1871, which gave to the courts of the United States jurisdiction in all cases in law and equity arising under the former act. Under the first act two classes of cases might arise: First, actions to enforce the rights of those who had been illegally denied the right to vote upon the ground of race, color, or previous condition of servitude; and second, actions to enforce the rights of those who had been deprived of office by reason of the denial to persons of the right to vote on account of race, color, or previous condition of servitude; and suits in equity ancillary or in aid of these rights of action would come within the jurisdiction of the circuit court of the United States, among which would be a suit to perpetuate testimony. But the pretense that in a suit to perpetuate testimony the court could go beyond the natural and reasonable jurisdiction to decide who constituted the legal returning board under the laws of Louisiana, and to enforce the rights of such as it might determine to be members of that board, and to enjoin others who were not, is without any foundation in law or logic.

In the Antoine case Judge Durell not only assumed to determine who constituted the legal returning board, but to prescribe who should be permitted to take part in the organization of the legislature and to enjoin all persons from taking part in such organization who were not returned by the Lynch board as elected; and this assumption of jurisdiction was made in the face of the express provision in the act of 1870 that its benefits should not extend to candidates for electors, for Congress, or for the State legislature. His order issued in the Kellogg case to the United States marshal to take possession of the State-house for the purpose of preventing unlawful assemblages, under which the marshal called to his aid a portion of the Army of the United States as a posse comitatus, can only be characterized as a gross usurpation.

It was not for the United States marshal or for the President to review the decisions and order of Judge Durell, and determine whether he had exceeded his jurisdiction. By the tenth section of the act of 1870, under which Judge Durell had assumed jurisdiction in the case, it is declared to "be the duty of all marshals and deputy marshals to aid and execute all warrants and precepts issued under the provisions of this act when to them directed;" and that they "shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged."

Under this authority the United States marshal called upon the general in command of the United States troops at New Orleans for a detachment to aid him in the enforcement of the orders and decree of the court, which demand was complied with.

The Constitution enjoins the President to "take care that the laws be faithfully executed," and this involves the enforcement of the orders, decrees, and judgments of the courts of the United States. But by the provisions of the act of 1870 it would seem that the United States marshal has a right to summon upon the instant a portion of the land or naval forces of the United States, without previous authority from the President, to enforce the orders or precepts of the courts.

But conceding all the facts in regard to Judge Durell, the question arises how they affect the legal rights of the parties, and the actual status of the Kellogg government. The Lynch returning board has been decided by the supreme court of the State to be the legal one, and the other boards, known as the Wharton, the De Feriet, and the Forman

boards, to have been without any authority whatever. Has the legal character of that board been impaired or vitiated by the illegal interference of Judge Durell? Conceding that interference to have been in every way wrongful, would it have the effect to vitiate the title of the Lynch returning board, as determined by the supreme court of the State? I think not. A title which the highest legal tribunal has declared to be good is not impaired by unlawful interference, even by violence in its support. And the case stands thus: That the circuit court of the United States has unlawfully interfered to do certain things which the highest tribunal of the State decides to be lawful and proper in themselves. The supreme court of the State having held that the legislature was the lawful one which was organized by the admission of such persons only as were returned by the Lynch board as elected members, is the legality of that organization affected by the fact that the circuit court of the United States interfered to prevent the organization of a legislature by persons who were not returned as elected by the Lynch board? If an officer in the performance of his duty were aided by a mob, the performance would not be made illegal by the presence and co-operation of an unlawful assemblage.

The Kellogg government is a fact, and its legality is sustained by the judicial tribunals of the State, and it is in active operation in all its departments without actual resistance anywhere. The McEnery government exists only on paper. McEnery and all those claiming office under it have never been returned as elected by any person having authority under the laws of Louisiana.

Every offense complained of on either side in this case was against the constitution and laws of Louisiana, and the question now presented broadly is whether the Congress of the United States shall interfere to correct violations of the laws of the State and to redress wrongs for which redress is provided by the State tribunals.

In the report of the majority of the committee it is alleged that the election on the 4th of November was so grossly fraudulent as to make it void; that if it had been fair, Kellogg and the other candidates on the Republican ticket would have been elected by a large majority. Without concurring in the opinion that the election was void, I entertain no doubt that it was an organized fraud of the largest dimensions, and that a decided majority of the people of Louisiana sympathize with the Kellogg government and earnestly desire to see it maintained.

Should Congress declare that Louisiana has no legal State government and provide by law for a new election, it would establish a precedent for overturning State governments and setting up new ones under which the government of every State would be at the mercy of Congress as controlled by the passions or exigency of parties.

Deploring this condition of things in Louisiana, and earnestly hoping that the people will take warning, and with one accord insist upon honest elections and the faithful observance of the laws, it is my deliberate judgment that it is better for them to bear the ills they have and seek reformation and relief under their own laws and tribunals than to invoke the National Government to the assertion of a power under which State governments would exist hereafter only by sufferance.

VIEWS OF MR. HILL.

Assenting as I do in the main to the correctness of the statement of facts touching the recent election in the State of Louisiana, and the history of the legal proceedings connected therewith, as set forth in the report of the committee, and commending the just though severe criticisms of a judicial tribunal for its improper intervention, I am still of opinion that the remedy for existing evils proposed by the committee is of questionable expediency and not the most effectual method of restoring order and quiet to a distracted community.

While it must be conceded that the election in certain parishes was not conducted with entire fairness, and in others frauds were committed, it is nevertheless true, according to the evidence before the committee, that on the whole the election was as fair and certainly as peaceable as the people of Louisiana are accustomed to hold. Irregularities and frauds in State elections, unfortunately, are not of rare occurrence beyond the limits of Louisiana. The intervention of a judge without jurisdiction of the cause presented to him prevented the counting of the election returns according to the forms of law. As it is, there has been no legal count of the returns.

No one doubts but that for the interposition of a judge of the United States district court the returns of the election would have been counted by a board of canvassers under the laws of the State, and that a result would have been reached, at least, with all the appearances of regularity in which a majority of the people would have acquiesced. Shall the unauthorized act of this official, condemned as it is by all legal minds, be permitted of itself to reverse the expressed will of a majority of the voters of Louisiana, or at least a majority of those that voted? Surely it cannot be a sound principle in politics or ethics that an admitted usurpation can create anything more than a government

de facto. To assert that it may bring into existence by its mere recognition a government that lives, moves, and has its being solely by such adoption is to declare that the usurping tribunal is supreme and its decisions and orders are irreversible. What boots it to rebuke the illegal and tyrannical assumptions of a judge if his orders and decrees must have all the effect he designed to give them? Of what consequence is it that his violations of law should be reviewed and censured if the effect is the same as though he had not exceeded his jurisdiction and abused the authority of his office? It would seem to be an act of supererogation to pause to wonder at the fatuity that dictated his course, if its end and aim are to stand as facts accomplished. In the light of policy it would seem better in deciding that a government foully and fraudulently set up by the fiat of a judge shall stand because it is a *de facto* government; that no discredit should be cast upon the integrity or intelligence of the magistrate. It certainly cannot commend a State government to those who are to live under it to inform them that the National Legislature, after a thorough examination into the history of its origin, have ascertained that it was born of fraud and arrogated power, and but for these could never have had existence.

To avoid the exercise by Congress of a power so delicate as that of annulling the entire election of a State, embracing the highest officials and parish officers of every grade, and a State legislature besides, I would prefer that only such legislation be had as is necessary to preserve order and respect for law in the State. This I think may be effected by enacting a law convening by name the members-elect to the two houses of the legislature (whose election has not been disputed before the committee by the contending partisans) on a day certain, in their respective chambers in the Mechanic's Institute in the city of New Orleans, and requiring them to organize their said houses by electing the necessary officers, and having organized, to proceed to count the said election returns and to declare the result of such count; to seat only such members as may appear by said returns to have been elected to the particular house, as the case may be, and to announce the election of a governor and lieutenant-governor, who shall thereupon be inaugurated for the terms for which they have been chosen at said election, and who shall thereupon proceed to execute the duties required of them by the constitution and laws of the State.

JOSHUA HILL.

COMPENSATION OF MESSRS. RAY AND M'MILLEN.

MONDAY, *March* 3, 1873.

Mr. West submitted the following resolution; which was referred to the Committee on Privileges and Elections:

"*Resolved*, That the Secretary of the Senate be, and he is hereby, directed to pay to John Ray and W. L. McMillen, each, full compensation as Senator for the unexpired term for which they were elected, as shown by their respective credentials, until the 4th of March, 1873; and also mileage."

[Special session of Senate, March, 1873.]

THURSDAY, *March* 13, 1873.

Mr. West submitted the following resolution; which was referred to the Committee on Privileges and Elections.

[Resolution same as that submitted March 3, given above.]

[First session of the Forty-third Congress.]

Mr. West submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

[Resolution same as that submitted March 3, given above.]

MONDAY, *June* 22, 1874.

Mr. Carpenter, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the resolution to pay John Ray and William L. McMillen compensation as Senators from the State of Louisiana, submitted a report (No. 476), accompanied by the following resolution; which was ordered to be printed.

[Resolution found at end of report.]

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Morton (chairman), Carpenter, Logan, Alcorn, Anthony, Mitchell, Wadleigh, Hamilton of Maryland, and Saulsbury.]

IN THE SENATE OF THE UNITED STATES.

JUNE 22, 1874.—Ordered to be printed.

Mr. Carpenter submitted the following report:

The Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the resolution offered by Senator West, as follows: "*Resolved*, That the Secretary of the Senate be, and he is hereby, directed to pay John Ray and William L. McMillen, each, full compensation as Senator for the unexpired term for which they were elected, as shown by their respective credentials, until the 4th of March, 1873," submit the following report:

Owing to the fact that in the State of Louisiana, in 1872 and 1873, there were two bodies claiming to be the legislature of that State, one known as the McEnery and the other as the Kellogg legislature, John Ray and William L. McMillen each claimed the seat made vacant in the Senate by the resignation of Hon. William P. Kellogg, and appeared and presented their credentials to the Senate, and attended before the Committee on Privileges and Elections, charged with the investigation of their claims. The committee reported against seating either of them, but both had incurred expenses in the prosecution of their claims.

By analogy to the precedents of the Senate, your committee are of opinion that both Ray and McMillen would be entitled to the salary of a Senator from the time of their election until the disposition of their claims respectively by the Senate; but regarding this precedent as vicious, your committee recommend the adoption of the following resolution:

"*Resolved*, That the actual expenses necessarily incurred by John Ray and William L. McMillen, claimants to a seat in the Senate from the State of Louisiana in the Forty-second Congress, in presenting their respective claims to a seat in the Senate, be paid out of the contingent fund of the Senate, which expenses shall be presented itemized and verified by the oath of the said Ray and McMillen respectively, and the amounts shall be audited by the Committee to Audit and Control the Contingent Expenses of the Senate.

[First session of the Forty-fourth Congress.]

Mr. West submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

"*Resolved*, That the Committee on Contingent Expenses be instructed to report what amounts of compensation, if any, are, in their opinion, due to the respective contestants, William L. McMillen and John Ray, claimants to a seat in the Senate for the unexpired term of William P. Kellogg; and to William L. McMillen as claimant heretofore to a seat in the Senate for the term commencing March 4, 1873."

WEDNESDAY, *July* 5, 1876.

Mr. West submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the claims of William L. McMillen and John Ray, contestants for the seat vacated by the resignation of William P. Kellogg, a Senator from Louisiana, for pay and mileage as Senators for the unexpired term named, be referred to the Committee on Privileges and Elections."

[Second session of the Forty-fourth Congress.]

Mr. West submitted the following resolution for consideration:

"*Resolved*, That John Ray, claimant for the seat in the Senate vacated by the resignation of William P. Kellogg, late Senator of Louisiana, be paid the sum of $1,329.14 out of the contingent fund of the Senate."

[Second session of the Forty-fifth Congress.]

TUESDAY, *January* 15, 1878.

Mr. Kellogg submitted the following resolution; which was referred to the Committee on Privileges and Elections:

"*Resolved*, That the Secretary of the Senate be, and he is hereby, directed to pay out

*Taken from Senate Reports, 1st sess. 43d Cong., No. 476.

of the contingent fund of the Senate full compensation and mileage as Senators to John Ray and William L. McMillen for the unexpired term of William P. Kellogg in the Forty-second Congress."

FRIDAY, *March* 22, 1878.

Mr. Hoar, from the Committee on Privileges and Elections, to whom was referred the resolution submitted by Mr. Kellogg January 15, 1878, directing the Secretary of the Senate to pay to John Ray and William L. McMillen the compensation and mileage of Senators for the unexpired term of William P. Kellogg in the Forty-second Congress, reported it with an amendment, and submitted a report (No. 182) thereon.

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Wadleigh (chairman), Mitchell, Cameron of Wisconsin, McMillan, Hoar, Ingalls, Saulsbury, Merrimon, and Hill.]

IN THE SENATE OF THE UNITED STATES.

MARCH 22, 1878.—Ordered to be printed.

Mr. Hoar, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom was referred Senate resolution to pay John Ray and William McMillen compensation and mileage, report as follows:

The full term of William P. Kellogg, Senator from Louisiana, expired March 3, 1873. He resigned January 13, 1873.

At the last-named date there were two bodies in Louisiana claiming to be the legal legislatures of that State. One of these bodies elected John Ray to fill the unexpired term; the other elected William L. McMillen. Their respective credentials in due form were presented to the Senate on the 22d day of January, 1873. Those of John Ray were certified to by William P. Kellogg, governor; those of William L. McMillen were certified to by John McEnery. Both sets of credentials were, on the day of their presentation to the Senate, referred to the Committee on Privileges and Elections.

On the 20th of February, 1873, the Committee on Privileges and Elections reported—

1. That there is no State government at present existing in the State of Louisiana.

2. That neither John Ray nor W. L. McMillen is entitled to a seat in the Senate, neither having been elected by the legislature of the State of Louisiana.

The first proposition was submitted by the committee to the Senate by virtue of a resolution passed January 16, 1873, in the following terms:

"*Resolved*, That the Committee on Privileges and Elections be instructed to inquire and report to the Senate whether there is a legal State government in Louisiana, and how and by whom it was constituted."

As part of the committee's report of February 20, 1873, a bill was submitted ordering an election in Louisiana. This measure was considered at great length by the Senate, and was rejected February 27, 1873. A motion to reconsider was laid on the table March 1, 1873.

No decision was ever made by the Senate of the question whether there was or was not, at the time specified, a legal State government in Louisiana, but the Senate rejected the bill ordering a new election to be held in Louisiana.

The second proposition submitted by the committee, that neither Ray nor McMillen were entitled to a seat in the Senate, was never acted upon by the Senate, as the term for which they claimed to be elected expired without the question having been considered.

Throughout the investigation made by the Committee of Privileges and Elections, by order of the Senate, of the affairs of the State of Louisiana, both Ray and McMillen were in constant attendance, aiding the committee by their knowledge of the case and by their testimony in the discharge of the duty imposed upon it.

In the Forty-third Congress a resolution that Ray and McMillen be paid as Senators for the unexpired term to which they were elected was referred to the Committee to Audit and Control the Contingent Expenses of the Senate. Mr. Carpenter, of Wisconsin, who made the report on the Louisiana case from the Committee of Privileges and Elections, was chairman of the Committee on Contingent Expenses. He submitted the following report upon the resolution giving compensation:

"Owing to the fact that in the State of Louisiana, in 1872 and 1873, there were two bodies claiming to be the legislature of that State, one known as the McEnery and the other as the Kellogg legislature, John Ray and William L. McMillen each claimed the seat made vacant in the Senate by the resignation of Hon. William P. Kellogg, and appeared and presented their credentials to the Senate, and attended before the Com-

* Taken from Senate Reports, 2d sess. 45th Cong., No. 182.

mittee on Privileges and Elections, charged with the investigation of their claims. The committee reported against seating either of them, but both had incurred expenses in the prosecution of their claims.

"By analogy to the precedents of the Senate, your committee are of opinion that both Ray and McMillen would be entitled to the salary of a Senator from the time of their election until the disposition of their claims respectively by the Senate; but regarding this precedent as vicious, your committee recommend the adoption of the following resolution:

"'*Resolved*, That the actual expenses necessarily incurred by John Ray and William L. McMillen, claimants to a seat in the Senate from the State of Louisiana in the Forty-second Congress, in presenting their respective claims to a seat in the Senate, be paid out of the contingent fund of the Senate; which expenses shall be presented itemized and verified by the oath of the said Ray and McMillen respectively, and the amounts shall be audited by the Committee to Audit and Control the Contingent Expenses of the Senate.'"

No action was ever had by the Senate upon this recommendation; it was not made until eighteen months after the respective credentials were presented. The claimants to the seat could not have been expected to preserve an account of items of their expenditure, nor could they have anticipated that a proposition would be submitted so entirely at variance with the idea of compensation attending Senatorial service, and so contrary to the uniform practice of the Senate.

The chairman of the Committee on Contingent Expenses of the Forty-third Congress was entirely familiar with the claims of Ray and McMillen. He made the report from that committee that they were entitled to compensation, but he proposed an innovation upon the precedents of the Senate in the manner of that compensation. The proposition to change the usages of the Senate did not meet with favor, and by the action had upon the cases of Mr. Pinchback, of Louisiana, and of Mr. Sykes, of Alabama, occurring and passed upon subsequently, the Senate confirmed its uninterrupted usage. In acting upon the two last-cited cases the Senate stipulated "that in no case shall any pay be allowed to a Senator to begin earlier than the date of his election or appointment."

Upon the foregoing facts we are of opinion that each of the contestants was justified in making the contest for the seat. If the usage of the Senate in such cases be followed each should be allowed the sum of $1,334.67, being the amount of compensation and mileage from the date of his alleged election to the end of the term. But we do not recommend such an allowance, but prefer to allow to each claimant only his actual and reasonable expenses incurred in making the contest.

Under the circumstances, however, it would be clearly unjust to require of the claimants an itemized account of such expenses. They allege that they kept no such account, relying on the unbroken usage of the Senate to allow salary and not compensation, and that they cannot now furnish either items or vouchers. It appears, however, that each of these gentlemen traveled from New Orleans to Washington, remained here more than a month, laying aside all other business, and wholly devoting himself to this contest. The question required an elaborate and thorough examination of the history of the Louisiana election and the claims of the rival State governments. In this examination the contestants acted as counsel, and rendered a service in which, if they had employed other suitable counsel, they might properly pay a large fee, which should be reimbursed by the Senate.

On the whole, we recommend the payment to each of the sum of $1,000, which is considerably less than the salary and mileage, and is a moderate estimate of the actual cost and expense incurred by each.

We therefore recommend that the resolution be amended by substituting therefor the following, and that, so amended, the same be adopted: Strike out all after the words "contingent fund of the Senate" and insert "the sum of $1,000 each to John Ray and William L. McMillen, as full compensation for their expenses as contestants for a seat in the Senate for the unexpired term of William P. Kellogg in 1873."

WEDNESDAY, *March* 27, 1878.

On motion by Mr. Hoar, the Senate proceeded to consider the resolution submitted by Mr. Kellogg January 15, 1878, to pay John Ray and William L. McMillen compensation and mileage as Senators from Louisiana; and the amendment reported by the Committee on Privileges and Elections having been agreed to,

On the question to agree to the resolution as amended, as follows:

"*Resolved*, That the Secretary of the Senate be, and he is hereby, directed to pay out of the contingent fund of the Senate the sum of $1,000 each to John Ray and William L. McMillen, as full compensation for their expenses as contestants for a seat in the Senate for the unexpired term of William P. Kellogg in 1873,"

It was determined in the affirmative—yeas 51, nays 7.

On motion by Mr. Cockrell, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Anthony, Armstrong, Bailey, Blaine, Booth, Bruce, Burnside, Butler, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Conkling, Conover, Davis of West Virginia, Dennis, Dorsey, Eustis, Ferry, Garland, Gordon, Grover, Hamlin, Hereford, Hill, Hoar, Ingalls, Johnston, Jones of Florida, Kernan, Kirkwood, Lamar, McCreery, McMillan, Matthews, Maxey, Merrimon, Mitchell, Morgan, Morrill, Oglesby, Paddock, Randolph, Rollins, Saulsbury, Saunders, Spencer, Teller, Thurman, Windom, and Withers.

Those who voted in the negative are Messrs. Cockrell, Coke, Eaton, McDonald, Sargent, Wallace, and Whyte.

So the resolution was agreed to.

[The debate is found on pages 2053-2056 of the Congressional Record, volume 7, part 3, 2d sess. 45th Cong.]

McMILLEN vs. PINCHBACK (MARR AND EUSTIS).

Contest for seat for term beginning March 4, 1873.

TUESDAY, *January* 21, 1873.

Mr. West presented the credentials of Pinckney B. S. Pinchback, elected a Senator by the general assembly of the State of Louisiana for the term of six years commencing March 4, 1873.

Ordered, That they lie on the table.

MONDAY, *March* 3, 1873.

The Vice-President presented a telegraphic dispatch, signed by John McEnery as governor of Louisiana, notifying him of the election of W. L. McMillen as a Senator from that State; and,

Objection having been made by Mr. West to the reception of the dispatch,

On motion by Mr. Sherman,

Ordered, That the question of the reception of the dispatch lie on the table.

[The debate is found on page 2147 of the Congressional Globe, part 3, 3d sess. 42d Cong.]

* * * * * * *

Mr. Schurz presented the memorial of W. L. McMillen, praying that the Senate may take notice of his election as a Senator from the State of Louisiana for the term commencing March 4, 1873.

Ordered, That it lie on the table.

FRIDAY, *March* 7, 1873.

Mr. West presented the credentials of William L. McMillen, elected a Senator by the legislature of Louisiana for the term of six years commencing March 4, 1873; which were read.

Ordered, That they lie on the table and be printed.

[First session of the Forty-third Congress.]

THURSDAY, *December* 4, 1873.

On motion by Mr. Morton,

Ordered, That the credentials of P. B. S. Pinchback and W. L. McMillen, claiming seats as Senators from the State of Louisiana, on the files of the Senate, be referred to the Committee on Privileges and Elections.

MONDAY, *December* 15, 1873.

Mr. Morton, from the Committee on Privileges and Elections, to whom were referred the credentials of P. B. S. Pinchback and W. L. McMillen, claiming seats in the Senate as Senators from Louisiana, reported that the committee were evenly divided upon the question as to whether Mr. Pinchback is, upon his credentials, entitled to be sworn in as a member, and asked to be discharged from the further consideration of the subject, and to refer the whole matter to the determination of the Senate.

* * * * * * *

Mr. Morton submitted the following resolution for consideration; which was ordered to be printed:

"*Resolved*, That the credentials of P. B. S. Pinchback for a seat in the Senate of the

United States for six years, commencing on the 4th of March, 1873, being in regular form, he is entitled under the law, and in conformity with the usages of the Senate, to be sworn in as a member; and that whatever grounds of contest there may be as to his right to a seat should be made thereafter."

[The debate is found on pages 189–191 of the Congressional Record, vol. ii, part 1.]

TUESDAY, *December* 16, 1873.

On motion by Mr. Morton, the Senate resumed the consideration of the resolution declaring P. B. S. Pinchback entitled to a seat in the Senate from the State of Louisiana.

After debate,

Ordered, That the said resolution lie on the table.

[The debate is found on pages 220–228 of the Congressional Record, vol. ii, part 1.]

MONDAY, *January* 12, 1874.

Mr. West presented a paper purporting to be a joint resolution of the legislature of Louisiana, expressive of confidence in Hon. P. B. S. Pinchback, claiming a seat in the Senate as Senator from that State.

Ordered, That it lie on the table.

TUESDAY, *January* 20, 1874.

Mr. Morton submitted the following resolution for consideration; which was ordered to be printed:

"*Resolved*, That the credentials of the Hon. P. B. S. Pinchback be referred to the Committee on Privileges and Elections; that the committee have power to send for persons and papers, and be instructed to investigate the circumstances attending the election of said Pinchback to a seat in this body."

MONDAY, *January* 26, 1874.

On motion by Mr. Morton, the Senate resumed the consideration of the resolution submitted by him on the 15th December last, viz:

"*Resolved*, That the credentials of P. B. S. Pinchback for a seat in the Senate of the United States for six years, commencing on the 4th of March, 1873, being in regular form, he is entitled under the law, and in conformity with the usages of the Senate, to be sworn in as a member; and that whatever ground of contest there may be as to his right to a seat should be made thereafter."

Mr. Morton having modified his resolution to read as follows:

"*Resolved*, That the credentials of the Hon. P. B. S. Pinchback be referred to the Committee on Privileges and Elections; that the committee have power to send for persons and papers, and be instructed to inquire into the conduct of said Pinchback in connection with said election,"

After debate,

On motion by Mr. Sherman,

Ordered, That the further consideration of the said resolution be postponed to Wednesday next at 1 o'clock.

[The detate is found on pages 913–921 of the Congressional Record, vol. ii, part 1.]

TUESDAY, *January* 27, 1874.

On motion by Mr. McCreery,

Ordered, That the credentials of W. L. McMillen, claiming a seat in the Senate as Senator from the State of Louisiana, be recommitted to the Committee on Privileges and Elections.

THURSDAY, *January* 29, 1874.

On motion by Mr. Carpenter to postpone the further consideration of the unfinished business, and that the Senate resume the consideration of the resolution submitted by Mr. Morton on the 15th December last, and modified by him on the 26th instant to read as follows:

"*Resolved*, That the credentials of the Hon. P. B. S. Pinchback be referred to the Committee on Privileges and Elections; that the committee have power to send for persons and papers, and be instructed to inquire into the conduct of said Pinchback in connection with said election,"

Pending debate,

On motion by Mr. Edmunds, the Senate proceeded to the consideration of executive business.

FRIDAY, *January* 30, 1874.

The Senate resumed, &c.

[The debate of the last two days, including a speech by Mr. Carpenter, is found on pages 1036-1058 of the Congressional Record, vol. ii, part 2. Mr. Morton's speech is found on pages 41-43 of the Congressional Record, vol. ii, Appendix.]

MONDAY, *February* 2, 1874.

The Senate resumed, &c.

[The debate is found on pages 1109-1111 of the Congressional Record, vol. ii, part 2. Mr. Morton's speech is found on pages 43-48 of the Congressional Record. vol. ii, Appendix.]

[Second session of the Forty-third Congress.]

WEDNESDAY, *December* 16, 1874.

The Vice-President laid before the Senate a letter of W. L. McMillen requesting the speedy action of the Senate upon his credentials as Senator-elect from the State of Louisiana; which was referred to the Committee on Privileges and Elections.

WEDNESDAY, *December* 23, 1874.

Mr. Morton submitted the following resolution for consideration; which was ordered to be printed:

"*Resolved*, That the Senate recognize the validity of the credentials of P. B. S. Pinchback as certified to by Governor William P. Kellogg, of Louisiana, under the seal of said State; and the Committee on Privileges and Elections are instructed to examine and report if said Pinchback is entitled to be admitted on the *prima facie* case thus made, or if such admission should be postponed until investigation is made as to the charges of corruption in his election alleged against him."

FRIDAY, *January* 22, 1875.

Mr. West presented the credentials* of Pinckney B. S. Pinchback, elected a Senator by the legislature of Louisiana for the term expiring March 3, 1879; which were read.

On motion by Mr. Sherman,

Ordered, That the credentials, together with the papers in relation to the contested seat in the Senate from the State of Louisiana on the files of the Senate, be referred to the Committee on Privileges and Elections.

SATURDAY, *February* 6, 1875.

Mr. West presented a memorial of P. B. S. Pinchback, praying speedy and definite action upon his credentials as Senator-elect from the State of Louisiana; which was referred to the Committee on Privileges and Elections.

MONDAY, *February* 8, 1875.

Mr. Morton, from the Committee on Privileges and Elections, to whom were referred the credentials of P. B. S. Pinchback, by unanimous consent submitted a report (No. 626), accompanied by the following resolution:

"*Resolved*, That P. B. S. Pinchback be admitted as a Senator from the State of Louisiana for the term of six years beginning on the 4th of March, 1873."

[The debate is found on page 1063 of the Congressional Record, vol. iii, part 2.]

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Morton (chairman), Carpenter, Logan, Alcorn, Anthony, Mitchell, Wadleigh, Hamilton of Maryland, and Saulsbury.]

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 8, 1875.—Ordered to be printed.

Mr. Morton, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to which were referred the credentials of

* A copy of the credentials is found on page 647 of the Congressional Record, vol. iii, part 1.

P. B. S. Pinchback for a seat in the Senate from the State of Louisiana, have had the same under consideration, and submit the following report:

That the certificate of William Pitt Kellogg, then and now the governor of the State of Louisiana, which certificate is verified by the great seal of the State, shows that on the 17th day of January, 1873, the Hon. P. B. S. Pinchback was elected to a seat in the Senate of the United States for the term of six years, beginning on the 4th March, 1873, by the legislature of Louisiana, in manner and form as prescribed by the act of Congress regulating the elections of Senators of the United States. Upon this certificate the committee are of opinion that Mr. Pinchback has a *prima facie* title to admission as a member of the Senate, and that whatever objections may exist, if any, as to the manner of his election or as to the legal character of the body by which he was elected, should be inquired into afterward.

The committee, therefore, recommend the adoption of the following resolution:

Resolved, That P. B. S. Pinchback be admitted as a Senator from the State of Louisiana for the term of six years beginning on the 4th of March, 1873.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1875.—Ordered to be printed to accompany Report No. 626.

VIEWS OF THE MINORITY.

The undersigned members of the Committee on Privileges and Elections beg leave to submit their views in relation to the admission of P. B. S. Pinchback as a Senator from the State of Louisiana.

The importance that the subject has attained by reason of the complications which now surround it impress it with a gravity not hitherto surpassed by any since the organization of the Government. We feel it to be a proper occasion to give our reasons for the course which our convictions of what is due alike to this body, to the people of Louisiana, and to the whole country impel us to pursue.

The resolution to be reported by the committee to the Senate for its consideration is as follows:

"*Resolved*, That P. B. S. Pinchback be admitted as a Senator from the State of Louisiana for the term of six years beginning on the 4th of March, 1873."

The certificate upon which this resolution is based is as follows:

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
New Orleans, January 15, 1873.

I, William Pitt Kellogg, governor of the State of Louisiana, do hereby certify that on the fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-three, Pinckney B. S. Pinchback was duly elected by the general assembly of this State to represent this State in the Senate of the United States for the full term of six years from the fourth day of March, one thousand eight hundred and seventy-three.

Given under my hand and the seal of this State this fifteenth day of January, A. D. one thousand eight hundred and seventy-three, and the Independence of the United States the ninety-seventh.

WM. P. KELLOGG.

By the governor:
[SEAL.]

P. G. DESLONDE,
Secretary of State.

The power of the Senate under section 5, article 1 of the Constitution, to "judge of the election, returns, and qualifications of its own members" is absolute and unlimited.

The object in this case is to seat P. B. S. Pinchback upon this certificate alone, irrespective of his election, and which in effect for the present excludes any consideration of the election itself.

It may be admitted that the general practice has been to admit the person chosen as a Senator to his seat upon credentials sufficiently authenticated either by the legislature or the governor of the State, subject of course to any contest that might be thereafter prosecuted in respect to his right to the seat. The credentials in themselves, it will be conceded, have no substantial value. It is the election, and the election alone, that gives to the person chosen the right to be a Senator.

The certificate of the governor of a State directed to be given by the act of Congress approved July 25, 1866, upon the election of a Senator, is but the certificate of a fact upon which the official existence of the person chosen depends. It gives to it no force whatever, and without it the election is just as good. It is merely one of the evidences

of the election in a solemn form, and to which due respect should always be paid. In the act referred to there is nothing said as to what effect should be given to such a certificate. It has, however, been generally regarded as sufficient in itself to presume a lawful election of the person represented by it to be chosen. It is most certainly appropriate that this act did not define the force of such a certificate. It prescribes a duty that the governor might or might not observe. The Constitution of the United States provides for the election of Senators by the legislatures of the States. This is their absolute right. Congress may regulate the time and manner of choosing Senators, and the power of Congress over the subject is limited to this only. The right of choosing Senators belongs to the legislatures alone, and such election is alone in all cases of inquiry to be determined by its records. The governor is not known in the election; no duty is imposed upon him by the Constitution in respect to it, or in respect to its authentication. The legislature, to which is alone confided the high trust of choosing Senators, can speak through its own organization, its own officers, and its own acts, as its official record will show.

The right of election is sacred; the right of having this election determined by its own record is equally sacred; for it might be that if other independent departments of the Government, as the executive, for example, possessed the right or power of authentication in the election of a Senator, you might impinge upon the full enjoyment of the power of the legislature in the due choosing of Senators. This absolute right to choose we hold should not and does not depend for its efficiency upon the action of the executive or any other officer of the State or Federal Government.

It will be observed that the certificate, such as we now have under consideration, necessarily involves these elements of belief before it can have the force which is now attempted to be given to it by the report of the committee in this case: first, that the facts stated in regard to the election are true; and second, that the person certifying as governor is in fact what he represents himself to be. The efficacy sought to be impressed upon this certificate, in at once admitting the person represented to be chosen to a seat, alone depends upon the latter fact. With this in dispute the efficient power is gone. Investigation is at once inaugurated to settle the disputed point. Inquiry leads to inquiry, and the real life of the certificate is lost in the strife, for it can be readily seen that in a contest as to whether the certificate has any validity, either by reason of the allegation that the person certifying was not in fact the governor, or from any other reason, the State might be left without a Senator, when by reference to the acts of the legislature the records would show a lawful election by a lawful body, and who could deny that a person so chosen and with such a record could not be admitted without regarding at all the contest about the certificate of the governor, or whether he was in fact governor?

We advert to this to show that a contest upon the subject of certificates at all for any legitimate cause destroys their force. It was intended that by their force alone there should be immediate unobstructed admission to a seat. It must be conceded, in order to give this effect to the certificate before us, that William Pitt Kellogg was at the time the governor of Louisiana. If he were not the governor, then it is no more than waste paper. All will admit, we presume, that this has been a subject of dispute at least since the State election which took place on the 4th day of November, A. D. 1872. A constant, earnest, and at times an aggressive protest has been made against Kellogg, as not only not entitled to be the constitutional and rightful governor of Louisiana, but as a notorious usurper, held in the position he has seized without color of right by means of the armed forces of the United States. Events occurring at the time, and continually since, and some of the most painful character, prove that he does not hold this place practically by any other tenure or power. Whatever else may be said of this notable prominent fact, all are well advised that the right of Kellogg to be governor of Louisiana is in good faith denied and resisted in every way possible to a peaceful resistance.

This at once, most naturally, opens up the inquiry as to the certificate itself, and no efficacy is to be ascribed to it until this is satisfactorily settled, for without this it is worthless for any purpose. We apprehend there is no diversity in the committee on this point. The report of the committee insists that Kellogg is the governor of Louisiana, and would proceed to show it by a course of argument and a system of evidence satisfactory to gentlemen uniting in that report. On the contrary, another course of argument, and other evidence equally satisfactory, have brought the undersigned to a very different conclusion. The broad field of inquiry and investigation is therefore opened up, for it must be manifest to an unprejudiced mind that an examination into the fact whether Kellogg was the rightful governor of Louisiana at the time he signed this certificate must bring us to his pretended election, and, with it, to the election of the body which chose Pinchback. The whole subject relating to the affairs of this State, in connection with the election held on the 4th of November, 1872, for the election of governor and other State officers, and members of the legislature, becomes involved in the very first

branch of the inquiry which it is conceded by all must be made and settled before any force can be imparted to the certificate.

Before entering upon this inquiry we submit most respectfully, putting it in the mildest form, whether this is not an exceptional case from the ordinary one, where it is conceded that there was a rightful governor to sign certificates and where there was a legislature to elect. It must be admitted that no such case was ever before presented to the consideration of the Senate. Notwithstanding it has been the usual practice to admit, in the first instance, persons to a seat upon such certificates, leaving the contest, if any, to be proceeded with thereafter in the usual way, yet the very first question as to the official character of the person pretending to be governor impairs, as we have before said, the wonted efficacy of such certificate; so that when in the examination of this primary question is involved the body that chose Pinchback, and in fact the whole State government of Louisiana, would it be fair, rational, and just to stop short of the substantial merits of the case when all can be settled at once?

It will be admitted, we think, that in such a controversy, opening up both the official character of the governor and the legal validity of the legislature choosing the Senator, we could determine against the validity of the certificate, and at the same time determine the validity of the election upon the record of the legislature and upon its official power of election. Suppose that such certificates should be attacked for fraud, as they could be, could any one say that such attack would involve alone the fraudulent character of the certificate, and not the rightful issue—the election itself? The attack would involve both, and involving both, common reason would dictate that we should decide the substantial question. While we could, in such an inquiry, set aside the certificate, we would give to the person rightfully chosen his seat, and all done in the same proceeding. For if our inquiry should be alone confined to the certificate, for whatever cause, we would be exposed to the fallacy of setting it aside and then remitting the case to the governor for other or further certificate of a fact simply, when we could, and it would be our duty, ascertain the fact ourselves to end the matter.

Therefore we conceive that even in a technical sense, upon a question submitted as this is, an examination of the whole subject is necessary to come to right conclusions; but when we view it in its broad sense, and as we have it in the light of history and events daily transpiring, many of which we must or are presumed to know, as legislators and members of this body, we would consider it a gross dereliction of public duty did we confine ourselves to a technical consideration of matter not substantial when in it are involved questions of the greatest moment, and which in their proper solution demand our earnest efforts and soundest judgment.

The facts present the broadest grounds for interposition in the broadest sense to ascertain the real right and settle a question that has already given, and, until rightly settled, will give to the country the greatest concern. The facts cannot be denied that imperatively call for such an interposition; mere parchment titles, mere certificates, sink into insignificance before the patent and undeniable facts which environ this case. Never before has such a case been made, and it is to be hoped that no such one will ever be made again.

A brief reference to the prominent facts will show how entirely and necessarily the whole case is before us.

A general election was held in the State of Louisiana on the 4th day of November, 1872, for governor and other State officers, for one-half of the senate, and for all the members of the house. John McEnery and William Pitt Kellogg were the opposing candidates for governor, the former in politics being the Democratic and the latter being the Republican candidate. By the official returns made by the regular officers of election to Henry C. Warmoth, then the acknowledged governor of Louisiana, and canvassed and counted by a returning board claiming to be a legal tribunal for this purpose, McEnery was found to have 9,606 majority over Kellogg; and, in respect to the legislature, according to these same official returns, and with the overholding senators, the senate stood—Democrats and Conservatives, 22; Republicans, 11; and there were two vacancies. The house of representatives stood—Democrats and Conservatives, 71; Republicans, 39; and there were seven vacancies, showing a large majority of Democrats and Conservatives in both branches of the legislature.

Another board of returning officers, claiming also to be legally constituted, found that Kellogg was elected, and also found that a large majority of Republican members were elected to the legislature. It is admitted on all hands that this board had no official returns of the election before it, but that its canvass and count were made up from newspaper reports, the statements of unofficial persons, the political complexion of the parish, and also by counting as votes cast a large number of affidavits of persons who represented in such affidavits that they were from various causes prevented from voting, and the large mass of which, in the end, turned out to be forgeries.

In this condition of things, Governor Warmoth, by his proclamation of the 20th Novem-

ber, 1872, called an extra session of the legislature, to be held on the 9th day of December thence following. The regular session, as provided by the constitution, would begin on the 6th day of January, A. D. 1873. On the night of the 5th day of December, just five days before the meeting of the legislature in extra session, as called to convene by this proclamation, E. H. Durell, a judge of the district court of the United States at New Orleans, passed an order directing Packard, the United States marshal, to take possession of the State-house, and to hold it subject to his further order, and meanwhile to prevent all unlawful assemblages therein. Packard, with a detachment of United States troops, seized the State-house, held it for weeks, and refused admission to any member of the legislature not returned by the board of returning officers headed by John Lynch, and which, in the course of these views, we shall designate as the Lynch board to distinguish it from the other boards. The consequence was that on the day of meeting, the 9th of December, no member not returned by the Lynch board was permitted to enter into the State-house. The members meeting there organized. The members, or rather the Democratic and Conservative portion of them, returned by the board of returning officers, which we shall designate by calling it the De Feriet board, met at the city hall and organized. Governor Warmoth at once recognized the latter body as the lawful legislature of Louisiana, and their place of meeting as the State-house.

Upon the organization of the body at the State-house, so called—it being the Mechanics' Institute hall, it being improvised into a State-house, there being no State-house for the purpose provided by the State since the removal of the capital to New Orleans—consisting of Republicans, it at once passed articles of impeachment against Warmoth, and, by virtue thereof, P. B. S. Pinchback, then lieutenant-governor, took upon himself the office of governor, and claimed to act as such. Kellogg, who was a Senator in Congress at the time he became a candidate for governor, resigned his seat in the Senate, by reason of which a vacancy took place in this body from that State. Each of these bodies thus organized elected a Senator to fill this vacancy. One, the McEnery body, as we shall designate it, elected Mr. McMillen, and the other, the Kellogg body, elected Mr. Ray for the unexpired term. Each presented their credentials regularly signed and attested, Mr. McMillen by Governor Warmoth, and Mr. Ray by Acting Governor Pinchback, each claiming to be the lawful governor of Louisiana. The extra session closed, and on the 6th day of January, 1873, the regular session began. Both bodies met at the same places and both organized. The one, Democratic, declared John McEnery duly elected, and the other, Republican, declared William P. Kellogg duly elected. Both qualified, and both proclaimed themselves to be the governor of Louisiana.

On Tuesday, the 15th day of January, the day fixed for electing a Senator for the long term, commencing on the 4th day of March, 1873, the one body, the Democratic, elected W. L. McMillen, and the other, the Republican, P. B. S. Pinchback. Both came here with credentials, those of McMillen signed by McEnery, and those of Pinchback signed by Kellogg, each representing himself to be governor, and in all other respects are in due form, and attested by the seal, or the pretended seal, of the State. The certificates of both were presented in March, 1873, and ultimately referred to the Committee on Privileges and Elections.

We have, therefore, presented to our consideration by the certificates before us the fact of two rival bodies and of two rival governors in the State of Louisiana—in fact, of two rival governments, each claiming to be the rightful government of Louisiana, each body claiming to be the lawful legislature of Louisiana and each sending rival Senators for a seat in this body, and each coming accredited with his certificate of election from the respective governors, each claiming to be the rightful governor of Louisiana. It is due alike to the people of Louisiana and to the dignity and constitution of this body that we use all the means in our power for a fair and just ascertainment of the rights of each to send a representative here. It must be acknowleged that as presented it is an exceedingly delicate question, and should be approached with all the spirit of fairness and candor of which the human judgment is capable. It is the first time in our history in which any such case has ever been presented to us, and it grows out of the unsettled condition of society in that State.

The question involves an inquiry into the fact as to which of two governors and of two bodies constitute the rightful governor and the rightful legislature of the State. And, indeed, further, in the progress of such an inquiry, whether there is any legislature at all qualified to elect a representative in this body to legislate not only upon matters affecting the affairs of Louisiana but of the whole country.

To our minds such a development of facts as we have, both historically and by the investigations and reports of both Houses of Congress made upon the subject-matter, that we should be confined to the inquiry only of ascertaining whether the certificate of the governor was surreptitious, or whether the person certifying was, in truth, the governor he represents himself to be, and not permitted to inquire whether the governor and the body electing (of which he is certifying) are both surreptitious, is beyond our compre-

hension, and where, especially as in this case, the examination of one is the examination of both, one is incidental to the other, and the facts upon which either claim their right of action are interwoven with the facts that apply to both—the one an examination of the certificate of what was done, and the other of the fact of what was done.

With these views we beg leave to examine the whole case, and to submit the conclusions to which we have arrived.

In the first place, however, we propose to confine ourselves to the consideration of the case as presented by the committee upon the certificate alone of Kellogg. It will be observed that the report of the committee puts the question in definite terms. It declares Kellogg "then and now the governor of Louisiana." It asserts what is denied, and presents as the sole question to be determined whether Kellogg was the governor of Louisiana at the time he signed this certificate; and this being so, we are then estopped from going behind it in the first instance by the usage of the Senate.

Thus confined in this stage of our inquiry to this single question, it becomes important for us to know all the facts and circumstances upon which Kellogg must rely in order to constitute him the rightful governor of Louisiana, and to this point we shall now direct our attention.

When we speak of the governor of Louisiana of course we must mean only that he is the governor according to the constitution and laws of that State. By the forty-eighth article, title 3, of the constitution of Louisiana it is provided that the supreme executive power shall be vested in a governor, who is to hold his office for four years, to be elected by the people. The person having the greatest number of votes shall be declared duly elected. In case of a tie between two or more candidates one of them shall be immediately chosen governor by the joint vote of the members of the general assembly.

No one, therefore, can be the constitutional governor of that State unless he be chosen in the manner prescribed.

We should, however, always be careful when the question, so grave in its nature, is raised, as in this case, to consider all the direct as well as the indirect facts and circumstances proving or tending to prove the real issue.

And here it is important to remember, in order to avoid misconception, that in determining this question in this or any similar case we are confined solely to powers conferred upon this body to judge of the elections, returns, and qualifications of its own members. Within this scope we possess all power, and our judgment is binding upon all, and cannot be brought into question by any person or tribunal whatever. But beyond this we cannot go; our acts can only have reference to one thing—whether the person chosen is entitled to be a member. Our decision is only binding when applied to this one particular fact. Our decision may be right or it may be wrong—that is for us to bear; but it does not bind other persons or other departments of the Federal or State governments, having other and different relations with the governor or legislature, or both, from contesting or confirming the rights of either or both to legal existence. Our decision here may be cited to show what we did, but it can be used only as an illustration of what others thought and did, and not as binding upon them except, as we have before stated, upon the fact of Senatorship, in which our jurisdiction is complete and final and binding upon all. The decision of this body upon this question, be it what it may, does not establish or disestablish the Kellogg government, so as to affect or conclude the rights of others not involved in the election of Senator itself. The people of Louisiana may consider themselves outraged by our action in receiving a Senator not elected by what they may hold to be the rightful legislature; nevertheless they are bound by it, because we have the right to judge and determine; but will any one pretend to say that the separate action of this body upon this single question, committed exclusively to its jurisdiction, should bind and conclude any other person and any other department, either State or Federal, in their own separate and distinct relations with this legislature, or as to any rights they may have as against or instead of it? Surely not! Therefore our decision does not vest a single right or confer a single power upon any other human being save the person upon which we have passed and admitted to membership upon this floor.

But to recur to the question. If, in the course of the investigation, from all the facts drawn from all the sources to which we have referred, we conclude that the pretended governor is a mere usurper, then his acts are void and avail nothing. Persons hold office or place under three different tenures—first, *de jure;* second, *de facto;* and, third, as a usurper—the only three modes, we believe, known to the law; and by one or the other of these tenures does the person exercise the office or place that he holds.

The first is clothed with all the powers that right, combined with possession, can give. The second is only clothed with the powers possession can give, that possession being obtained under a color of right; and these powers are limited to certain well-defined acts. The third refers to a person undertaking to hold office without any color of right; he is a mere usurper, whose acts are void.

The distinguishing differences between officers *de jure* and *de facto* and a mere usurper are well laid down in the books in the earlier days, and the same are observed to this

day. In a leading case, decided so far back as 1738, the general principles relating to officers *de jure* and *de facto* were well defined. In this case one Goldwire, "under pretense and color of being elected mayor of Christ Church, in the county of Southampton," was presented unto William Willis, steward of the court leet, and was there sworn into the office of mayor, and, in fact, exercised the office till —— day of ——, 1736, and that being in the exercise of said office, and under "pretense of being elected, and sworn into the same, he issued a summons to the several burgesses of the corporation to meet," &c., and at such meeting he nominated the defendant Lisle as one of the burgesses, and the question was whether, when he made such nomination, he was mayor *de facto*, for it was found that he had never been elected, and, if mayor *de facto*, whether he had the power to make the appointment. It was held by the court that Goldwire was not so much as a mayor *de facto;* for in order to constitute a mayor *de facto* it is necessary that there be some form or color of an election; but without this, the taking the title and regalia of the office, and the acting and being sworn in as mayor are not sufficient. Now, here it appears that Goldwire was never elected in fact; and though it be stated that he was sworn at the leet, it does not appear (as it ought) that this was agreeable to the constitution of the borough. And it is not material that he acted as mayor, as it is found that a *quo warranto* was recently prosecuted against him, pending which the present election was made, and that he was thereupon adjudged to be a usurper." (Andrews's Reports, Henry *vs.* Lisle, 173.) The distinctions then made are continued to this day, and are as clearly defined:

"An officer *de facto* is one who exercises the duties of an office under color of an appointment or election to that office. He differs, on the one hand, from a mere usurper of an office, who undertakes to act as an officer without any color of right, and on the other from an officer *de jure*, who is in all respects legally appointed and qualified to exercise the office. These distinctions are very obvious, and have always been recognized."—(17 Connecticut, Plymouth *vs.* Painter, 588; 7 Johnson, People *vs.* Collins, 549; 2 Kent.)

It is claimed by some that though it be a question whether Kellogg be a governor *de jure*, yet he is a governor *de facto*, and as such his certificate of the election of Pinchback is to be recognized as equally binding upon us as if he were governor *de jure*.

Holding, as we do, that he is neither the governor *de jure* nor *de facto*, but a mere usurper, and a usurper not keeping himself in position by his own unaided local power, but by the aid of armed forces of a foreign power—in its true relations to this case as much a foreign power as that of Great Britain could be—we desire, briefly, to examine this phase of the subject.

Keeping in view the rulings we have cited, is Kellogg so much as a governor *de facto?* In disposing of this we dispose of his character as governor *de jure*.

As we have already noticed, the constitution of Louisiana provides that the governor shall be elected by the people. To be such *de facto*, he must be in by color of an election. If he has no color of an election, he is nothing but a usurper, "who is one undertaking to act without a color of right." Two propositions are to be here considered, in order to arrive at correct conclusions—

1. Was Kellogg elected by a majority of the votes of the people at the election held on the 4th day of November, 1872?

2. If he was not, then had he such a color of an election as to constitute him governor *de facto?*

This brings us to the wider domain of fact which at every step has marked this controversy from its inception in 1872 to the present period. In the direct examination of the matter, all the facts that may tend to a correct result should be considered. We have a great variety of facts and circumstances, some historical in their character, some which we are obliged to know or are assumed to know from our constitutional relations to the State, her people, her government, her officials, whether judicial, ministerial, executive, or political, and those which we have gathered ourselves through committees of this body in the investigation had by resolution of this body passed on 16th January, 1873, and which is as follows: "*Resolved*, That the Committee on Privileges and Elections be instructed to inquire and report to the Senate whether there is any existing State government in Louisiana, and how and by whom it is constituted;" and to which committee were also referred the certificates of John Ray and W. L. McMillen, both claiming the seat in this body supposed to have been made vacant by the resignation of William Pitt Kellogg.

This committee, composed of Messrs. Morton, Carpenter, Logan, Anthony, Trumbull, Alcorn, and Hill, made a diligent and laborious investigation of all the matters connected with both questions, and made an elaborate report to the Senate, accompanied by a large amount of testimony. It is Senate report No. 457, Forty-second Congress, third session. From all the evidence, then, and which covers and exhausts the whole subject, was Kellogg in fact elected by the people of Louisiana the governor of that State? The testimony shows that the election was held on the 4th day of November, 1872, and that

it was held under the election laws of that State, approved March 16, 1870, and that official returns were made of that election to the governor of the State by the supervisors of registration as required by the fifty-third section of that act.

The fifty-fourth section of the same act provides for a returning board, before whom all returns are to be laid by the governor, the governor being one of the board by virtue of his office, and this board is to canvass and compile these returns of elections and make returns of the persons elected to the secretary of state. Henry C. Warmoth was then governor of the State of Louisiana, having been elected in 1868, and who, by article 53, title 3 of the constitution, was to hold his office till the second Monday of January thence following the election held on the 4th day of November, 1872, and until the Monday next succeeding the day that his successor shall have been declared as duly elected, and shall have taken the oath of office as required by the constitution. It is not our purpose just now to refer to the difficulties occurring in the organization of the board of returning officers; upon another branch of the subject we shall revert to it; but it is sufficient for our present purpose to ascertain that the election was held and the official returns were made of that election, and that they were counted and the result ascertained.

The official returns were made to the governor by the supervisors, and were by him laid before a board of returning officers, claiming to be legally constituted for this election. It may be necessary here to state that by the election law of 1870 the governor, lieutenant-governor, the secretary of state, one John Lynch, and T. C. Anderson, or a majority of them, were made the returning officers for all elections in the State.

The governor had in his possession the official returns of the election, but by reason of the changes in the board through disqualifications and from other causes, and through which two boards were organized, each claiming to be the legal one, and both appealing to the courts of the State to settle their respective rights, he did not lay the official returns before either board; but, in view of the condition of things, and to get rid of the difficulties of the situation, and to get rid of both boards, he approved the law passed at the preceding session of the legislature providing the mode of conducting elections, and which repealed entirely and absolutely the election law of 1870. He approved this act November 20, 1872, and it provided specially for the selection of a board of returning officers, to be made by the senate. This at once put out of official existence the contending members of the rival boards. The senate not being in session, Warmoth then, by virtue of the power claimed by him under the constitution to fill vacancies, appointed De Feriet, Wiltz, Isabelle, Austin, and Taylor, who took the oath of office, and before whom, on the 4th day of December, 1872, he laid the official returns, and they proceeded to canvass and compile them for senators and members of the house of representatives, and declared the results, and which were then officially promulgated by Governor Warmoth. This return gave the results in both branches of the legislature as we have already stated them. On the 20th day of November, 1872, the day on which he signed the act abolishing the old board, he issued his proclamation calling an extra session of the legislature, to convene on the 9th of December.

The majority of the members of both branches of the legislature declared to be elected by this returning board met on the 9th December at the city hall in New Orleans, and organized both houses. They were recognized by Governor Warmoth as the legal legislature of Louisiana. After organization, the senate proceeded to elect five persons, taken from all political parties, to constitute the board of returning officers for elections, as required by section 2 of the act of November 20, 1872, and accordingly elected Mitchel, Forman, Thomas, Hunsaker, and Todd as such returning officers. The official returns were laid before this board by the secretary of the De Feriet board, which had just before completed a canvass of them for members of the legislature, as we have stated, and they were all again canvassed by this new board, and with the following result:

McEnery	66,767
Kellogg	54,479
Majority for McEnery	11,288

The witness, Mr. Forman, a member of this board, brought with him the official returns and had them before the committee of the Senate, then investigating the case, and in all his testimony gave a satisfactory account of the manner in which the canvass was made. His evidence will be found, together with the official vote for governor, in the report made by Mr. Carpenter, and accompanying testimony on pages 75 to 83, inclusive. There was no pretense that these were not the official returns; they were before the committee. There was no effort made to invalidate them in any way. Every opportunity was given. The same section of the law requiring the supervisor of registration to send the voting list and returns to the governor also required him to make triplicates and retain one. No effort was made by the production of any duplicates to

impair their correctness. It must be conceded that they were the official results, and that according to them McEnery was elected. There can be no other conclusion. It must be conceded, too, that Kellogg was not elected. Whatever right to the position as governor Kellogg may have, he certainly has none by the regular official returns of the votes of the people, as cast and returned under the constitution and laws of Louisiana.

Then, having no right whatever by virtue of the election itself, has he any right by color of an election? And this brings us to the second proposition. We can well conceive that this right by color of an election is somewhat indefinite in meaning and subject to many deductions in inferences from a given statement of facts, as in this case. Some may ascribe a more rigid construction as to what may be meant by a colorable right to a place than others. But this must be determined upon all the facts and circumstances as they are presented, and we must gather from them whether there is in good faith any colorable right to hold the place; otherwise it is a fraud and a usurpation. There must be some reasonable meaning attached to the words "colorable right," or "under color of an election." Why use them in order to create an officer *de facto*, and to distinguish him from a usurper, unless they do mean something or have some force?

We hold that, giving the weakest possible force to these words, there is nothing in this whole case that can give a pretense to the color of an election. It has been shown that Kellogg was not elected. Then what is there to impress him with the color of an election? Nothing whatever. A more bold, shameless, reckless usurpation is not found in history.

He stands upon one thing, and upon one thing alone, and that is the declaration that if the people had voted and voted their sentiments he would have been elected. If this can give a color to a right, and dignify him with official power, even for the most limited purposes, then he is endowed with it. He pretends to hold his election by virtue of a canvass under a board claiming to be returning officers—consisting of Lynch and Herron for a time, then Bovee, Longstreet, and Hawkins—in which they gave some 17,000 majority to Kellogg.

The objections to this canvass are, first, that these gentlemen had not a tittle of authority to canvass, the law under which they pretended to act being absolutely repealed, and therefore they possessed no power whatever to do so.

And next, that there was not an official return before them to canvass; but it is admitted by Lynch in his testimony taken by the committee, found on page 155, that there were no returns before them, and that they obtained their information as to the results of the election from all kinds of sources, and from one particularly, the known political divisions of the voters of a county.

Comment upon such a canvass is unnecessary. The machinery of elections by means of which public sentiment is definitely ascertained, and our governments, both Federal and State, are carried on, is an essential element in the American system. There is no substitute for it, and without it there is no order, government, or law. It must be established for the public good, and it must be supported when established for the public safety. The collected will of the people is only known through it. The voter that does not resort to it for the expression of his will from any cause cannot be heard above it or outside of it. True, an election may be set aside for fraud, intimidation, or other pregnant cause, but still the collected will of the people must be expressed through its machinery. A citizen not voting is as dead in law as if he were in fact dead so far as concerns the affirmative expression of his political will. The question is not what the voter may have done had he voted or offered to vote, but what did he do by his vote?

But to characterize properly the power of this board to make this canvass, and the supreme folly of the canvass itself, it will only be necessary to refer to the report from the Committee on Privileges and Elections, signed by Messrs. Carpenter, Logan, Anthony, and Alcorn, and to which we have already referred. The following extracts are to be found on pages 26, 27, and 28:

"One of two things is certain, the governor's approval of the new election law on the 20th of November gave it effect on that day or it did not.

"Assuming that the approval on that day was regular, the new law absolutely repealed all the laws under which the Warmoth board and the Lynch board were pretending to act, and of course abolished both boards without regard to the question which was the legal one. All that had been done in the election of November, 1872, in pursuance of the old laws, that is, the registration, voting, and returns, was as valid after the act of November 20 as before. If the canvass had been made by the proper board under the old law, and in all things completed, the rights of parties based upon that canvass would not have been affected by the repeal of the laws. But the act of November 20 taking effect after the returns were made and before they were canvassed, transferred the duty of canvassing to the new board created by the act."

Again:

"On the 6th of December, 1872, the Lynch board—Bovee (who was then acting as

secretary of state in place of Herron), Lynch, Longstreet, and Hawkins—pretended to have canvassed the returns of the election, and certified to the secretary of state that Kellogg had been elected governor; Antoine, lieutenant-governor; Clinton, auditor; Field, attorney-general; Brown, superintendent of education; and Deslondes, secretary of state; and also certified to a list of persons whom they had determined to be elected to the legislature.

"There is nothing in all the comedy of blunders and frauds under consideration more indefensible than the pretended canvass of this board. The following are some of the objections to the validity of their proceedings:

"1. The board had been abolished by the act of November 20.

"2. The board was under valid and existing injunctions restraining it from acting at all, and an injunction in the Armstead case restraining it from making any canvass not based upon the official returns of the election.

"3. Conceding the board was in existence, and had full authority to canvass the returns, it had no returns to canvass.

"The returns from the parishes had been made under the law of 1870 to the governor, and not one of them was before the Lynch board.

"It was testified before your committee by Mr. Bovee himself, who participated in this canvass by the Lynch board, that they were determined to have a Republican legislature, and made their canvass to that end. The testimony abundantly establishes the fraudulent character of their canvass. In some cases they had what were supposed to be copies of the original returns, in other cases they had nothing but newspaper statements, and in other cases where they had nothing whatever to act upon they made an estimate based upon their knowledge of the political complexion of the parish of what the vote ought to have been. They also counted a large number of affidavits purporting to be sworn to by voters who had been wrongfully denied registration or the right to vote, many of which affidavits they must have known to be forgeries. It was testified by one witness that he forged over a thousand affidavits and delivered them to the Lynch board while it was in session. It is quite unnecessary to waste time in considering this part of the case, for no person can examine the testimony ever so cursorily without seeing that this pretended canvass had no semblance of integrity."

It may be well enough to observe here that besides the distinguished gentlemen who united in this report, Judge Trumbull and Mr. Hill, who were members of the committee, in this respect concurred with the report, whilst differing upon some other things, and in conclusions upon the whole case. The ability of all these gentlemen in the performance of the grave duty assigned to them is unquestioned; their labor and attention about it known and appreciated; and their party affiliations must stamp their detail of facts with freedom from all political bias in favor of McEnery and his government. Can anything more be added to show that there is not a pretense by which Kellogg can manufacture a colorable title to an election in fact?

It must be remembered that we are not in this controversy obliged to show that Mr. McEnery was elected in fact. Our purposes are answered when we show that Kellogg is not elected, or that he has no colorable title to an election.

In simple justice to the gentlemen of the committee making the report to which I have referred, whilst thus admitting that Kellogg was not elected, they come to the conclusion that, from irregularities, intimidations, and frauds, and other causes, no fair election had been held, and that it should be annulled and a new one ordered by Congress, and to be conducted under the auspices of the General Government. In order that there may be no misconception, we give the following extract from their report, which will be found on pages 44 and 45:

"The testimony shows that leading and sagacious politicians of the State, who were acting with Warmoth, entertained the opinion before the election that Warmoth's control of the election machinery was equivalent to 20,000 votes; and we are satisfied by the testimony that this opinion was well founded. We believe that, had registration been accessible to all, and the polling places been properly established, the result of the election would have been entirely different. And although we cannot approve of such a canvass as that made by the Lynch board, who seem to have acted upon the principle of 'fighting the devil with fire,' and circumventing fraud by fraud, and cannot say that Kellogg's government was elected, nevertheless we believe that Kellogg's government was defeated and the popular voice reversed by the fraudulent manipulation of the election.

"If the Senate should be inclined not to go behind the official returns of the election, then the McEnery government and legislature must be recognized as the lawful government of the State; and McMillen, if regularly elected by that legislature, should be seated in the Senate in place of Kellogg. But your committee believe that this would be recognizing a government based upon fraud, in defiance of the wishes and intention of the voters of that State."

In all this it will be observed that, whilst they condemn the manner of the election of McEnery, they take care to affirm again that Kellogg was not elected.

Then, so far as Kellogg is concerned, there is nothing to show that he had the slightest right, either by an election or the color of an election, to hold this office. He must therefore be regarded as a usurper; for in no other character could he hold the place, if not in that of governor *de jure* or *de facto*.

The principles are well and plainly defined in the case of Plymouth *vs.* Painter, 17 Conn., already quoted, in respect to the acts of persons holding place under one or the other of these modes. The following is from page 593:

"The acts of a mere usurper of an office, without any color of title, are undoubtedly wholly void, both as to individuals and the public. But where there is a color of a lawful title, the doings of an officer, as it respects third persons and the public, must be respected until he is ousted on a *quo warranto*, which is the appropriate proceeding to try the validity of a title to an office, and in which it would be necessary for him to show a complete title in all respects; although in a suit against a person for acts which he would have an authority to do only as an officer, he must, in order to make out a justification, show that he is an officer *de jure;* because the title to the office being directly drawn in question, in a suit to which he is a party, may be regularly decided. So where he sues for fees, or sets up a title to property by virtue of his office, he must show himself to be an officer *de jure*."

It is here laid down—

First, that the acts of a usurper are void.

Secondly, that the acts of an officer in by a color of title—that is, an officer *de facto*, where the rights of third persons or the public are concerned—are to be respected.

Thirdly, that where he is directly concerned he must show himself to be an officer *de jure* whenever the direct issue is made, either as to title, or fees, or as a trespasser, or otherwise.

If Kellogg, then, be a usurper, the certificate relied upon in this case has no value for any purpose. But let us assume, for the sake of the argument, that Kellogg was governor *de facto;* that he was in by color of an election, and by color of an election only, and not by an election itself; with such knowledge upon our part, with the known fact, besides, that his right to the place is denied and contested, that there is a rival governor, in fact a rival government, we should proceed with great caution in giving such efficacy to his simple certificate. True, the third section of the act of Congress of 1866, making provision for the election of Senators, makes it the duty of the governor to certify the election to the President of the Senate; it still stops short of prescribing the force of such a certificate. No doubt Congress intended that ordinarily it should be regarded as sufficient for admission to a seat, but it must be manifest that this certificate is not the real credentials of a Senator-elect, but intended originally, we may presume, as a substitute for it. The real credentials of the election is a copy of the record of the election itself, properly certified by the officers of the body electing; for Congress has no right to impose this duty upon the governor, and that neither it nor the person elected can compel the governor to issue any such certificate.

There must be design in not presenting a certified copy of the record of election by the legislature instead of depending alone upon this certificate of the governor, when it was well known that every step in the progress of this case would be contested. The declaration in the report submitted by the committee, that Kellogg was then and now the governor of Louisiana, defines the spirit of the whole proceeding; and that is that it is more of an object to get Kellogg recognized in some way as governor by this body than the admission of Pinchback to a seat in it.

Therefore should we be more careful still how we undertake, in giving ostensible credence alone to a certificate, to pass upon a higher matter—the legal character of the person giving it. Why not, in such an acknowledged condition of things, recur to his credentials, which the record of the election or a copy of it can make? But, that produced, it is too apparent that the contest would be transferred from the governor to the legislature; the legislature is out of being, and therefore the fact of an election by it can only be inquired into; but the governor is still living in the place in which he was put, and still kept by an armed force, and to be kept there if his acts are to be respected or sanctioned by us. How shall we close our eyes to the facts staring us in the face? We again beg leave to repeat that with the assumption that Kellogg is at best but a governor *de facto*, with a rival governor claiming the right, and with the acknowledged power to exercise it in the absence of the troops of the United States, should we not be careful, if we can in any way abstain from determining questions of the present, which concern alone the present, and which should be determined in a different way and by all branches of the Government, if to be determined at all by it. The election of Pinchback does not concern the present; the body electing him is *functus officio*. He must stand or fall by the action of that body. Let us go back to that, and upon the acts and legal validity of

that body determine the right to a seat. We say again that the passage of the resolution decides only one thing, the right of membership, and binds no one to anything besides; but the fact that in doing this we have acknowledged the legal validity of Kellogg's official character may influence others or justify others in doing things to the infinite injustice of the people of Louisiana, and to the persons there claiming to be officers by virtue of a rightful election.

Again, we well understand the principles which limit and qualify the powers of an officer *de facto*. His acts are scanned and judged; he can do only those that are to be considered as necessary to be done; indeed, so confined in this respect that it was held, in the case of King *vs.* Lisle, that the proper question in a case would be "whether the person be an officer *de facto* as to the particular purpose under consideration;" he can do nothing for himself; he cannot set up title by virtue of his office; he cannot sue for his fees or salary; he cannot justify in a trespass; he can do nothing that may bring in issue his right to hold the office without showing that *de jure* right for the exercise of it. As a judge *de facto* his judgment in a litigation between third parties would be good; a sale of property under such a judgment would be good to pass title; and for the reason that third parties are not supposed to be able to inquire into the rights of one holding and exercising the duties of the office, and must therefore act upon what appears to be the right. But a shériff *de facto* seizing and selling the property under that or any other judgment in a suit against him for the seizure by the owner or possessor of the property, he must for his defense show that he held his office *de jure*, for this concerns himself only, and he should know whether he was in right an officer.

Shorn of the general and enlarged powers of an officer *de jure* by the plainest principles of law, limited and circumscribed by rules founded in reason and having the sanction of ages, shall we be disposed to give to the act of such an officer—governor *de facto*, if even he be such—that full and unqualified effect in this case, with the extraordinary circumstances surrounding it, as if he were an officer *de jure*, when that act, too, bears directly upon the constitution of this body, which we are bound to guard, and upon the right of a State to have its true representatives upon this floor? In regard to the constitution of this body the direct issue is made; this pretended governor represents himself to be the governor of Louisiana, and upon this alone does the committee rest the case. It is admitted that he must be the governor to give the certificate any power whatever. In raising the question it is shown that he is only governor *de facto*, if governor at all, and not *de jure*, that is, governor for a purpose only, and that purpose to be judged of, whether proper or not, when the exigency arises. It is upon us, and it is whether we shall constitute members of this body upon the certificates of such a governor, or shall we not rather recur, as we have before inquired, into the election itself or the record of it.

Upon this body rests the duty of preserving its own organization, and of admitting its own members. Here its power is supreme, and for its independence it must depend upon this power, and its proper and legal and rational exercise; and it is to judge of the fact whether a certificate (not of a governor, as contemplated by the law, a rightful governor in all respects—but of such a governor) shall have the efficacy now asked for it.

Indeed, in this very case, in the complications in Louisiana, the troubles and disorders there, the very soul of the objection that we now urge against the recognition of this certificate is made to appear. There is trouble about the State government in that State. There is trouble as to who is the constitutionally elected governor, both claiming it, and as to which body of the two claiming to be the legislature is the real one. In this contest, where so much right is involved, and where right should be done, might it not be that, if we should admit Pinchback upon the certificate of Kellogg, we would to that extent recognize him as the rightful governor of Louisiana, and possibly direct additional power against the other side. Would this be wise, and just, and expedient; and when we know, too, that so far as the certificate in itself is concerned it adds nothing to title, but that the election constitutes this? If it is the policy to settle these disturbances in Louisiana, to recognize either governor or none, do it in the usual manner known to the laws, and that is by legislation upon the part of Congress, when the whole subject can be considered, and the remedy, if any, be applied.

Having come to the conclusion that Kellogg was a mere usurper and the certificate not entitled to respect, or if it should be considered by some that he was the governor *de facto*, that even in this view no force ought to be given to his certificate, we are brought to the consideration of the main fact itself, the election of Pinchback by a legislature. While this is not technically before us, it is substantially. While the report of the committee bases its action entirely upon the force of the certificate, the resolution submits the question of admission generally. It cannot be denied that the inquiry upon one branch opens up the whole subject, and one cannot be well considered without considering both.

This brings us to the examination of the body organized under the returns made by the Lynch board, to which we have referred in the other branch of the case. In looking

into the organization that elected Pinchback, the surreptitious inauguration of Kellogg into the gubernatorial office pales into insignificance before the fraudulent creation of this body into a legislature and of its shameless pretension to power.

Even admit that Kellogg was the rightful governor of Louisiana, and that his certificate should have all the force which could properly under ordinary circumstances attach to it, still all the facts are before us, and they are of the gravest character. The question is not who are members of the legislature of Louisiana—for that body is the judge of this, and of their elections and qualifications; with these we have nothing to do; but the question is as to the legislature as organized, whether there is one in being to elect, and whether such an one elected Pinchback. The existence of a legislature competent to elect a Senator is not only a historical fact to be known to us as any other patent fact, but it is one which is susceptible of proof.

It will be necessary again to give a brief résumé of the facts known to exist in Louisiana respecting the organization of the body claiming to be the legislature of that State, and which elected Pinchback.

It will be remembered that the election occurred on the 4th day of November, 1872, and it was held under the election law passed in 1870. The law provided for a board of returning officers, before whom all the returns of the State were to be laid by the governor, to be canvassed and compiled; and further provided that the governor, Warmoth; the lieutenant-governor, Pinchback; secretary of state, Herron, and John Lynch, and T. C. Anderson comprise this board. It met on the 13th and 14th November. Pinchback and Anderson, being candidates for office, were disqualified. The governor, Warmoth, removed Herron and appointed Wharton in his stead as secretary of state, by virtue of which he claimed to be a member of the board. Differences arose in supplying the vacancies occasioned by the disqualification of Pinchback and Anderson. The result was two sets of returning officers, each claiming to be the rightful, legal board; one headed by Warmoth as governor, consisting of himself as governor, Wharton as secretary of state, Hatch and Da Ponte, the latter being chosen to fill the vacancies. The other board, headed by Lynch, consisting of himself, Herron, who still claimed to be secretary of state, Longstreet, and Hawkins, the latter being chosen to fill the vacancies. Both boards applied to the courts of the State, and in the midst of the litigation as to which was the legal board, the governor, Warmoth, on the 20th day of November, A. D. 1872, approved an act which had been passed at the previous session of the legislature, repealing entirely the act passed March 16, 1870, for conducting elections, and under which this election had been conducted up to this time. This act abolished the returning board established by the act of 1870, and made provision for another one to be elected by the senate. This disposed of both boards. No election returns had been laid before either. There being no returning board in legal existence to canvass the returns, and there being no session of the senate, so that a board could be elected as provided by the law, to consist of five persons, the governor claimed his right to make the appointments under the power to fill vacancies as provided by this article of the constitution of Louisiana (article 61, title 3): "The governor shall have power to fill vacancies that may happen during the recess of the senate by granting commissions which shall expire at the end of the next sessien thereof unless otherwise provided for in this constitution," &c. On the 3d day of December he appointed De Feriet, Wiltz, Isabelle, Austin, and Taylor. On the day following he submitted the official returns to them, and they canvassed and compiled them, and with the results we have before given, showing a large majority of Democrats and Conservatives in both branches of the legislature. Upon the same day he made official proclamation of the results ascertained by this board, as follows:

Proclamation.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
New Orleans, December 4, 1872.

Whereas P. S. Wiltz, Gabriel De Feriet, Thomas Isabelle, J. A. Taylor, and J. E. Austin, returning officers appointed by the governor to fill vacancies existing, in accordance with the constitution and laws of the State of Louisiana, have made declaration of the result of an election held November 4, 1872, and have declared certain persons elected to the senate and house of representatives of the State of Louisiana, as will appear from the returns herewith attached and made a part of this proclamation; and

Whereas such returns are compiled from the official returns of commissioners of election and supervisors of registration, on file in this office, and are in fact and in form accurate and correct, and made in accordance with law:

Now, therefore, I, Henry Clay Warmoth, governor of the State of Louisiana, do issue this my proclamation, making known the result of said election aforesaid, and command all officers and persons within the State of Louisiana to take notice of and respect the same.

Given under my hand and the seal of the State this 4th of December, A. D. 1872, and of the Independence of the United States the ninety-seventh.

H. C. WARMOTH.

By the governor:

Y. A. WOODWARD,
Assistant Secretary of State.

At the same time the Lynch board, continuing its organization notwithstanding the repeal of the act under which they pretended to canvass, and from the data to which we have already referred, declared who were elected members of the legislature, a large majority of whom were Republicans.

Governor Warmoth, when he approved the bill on the 20th November repealing the election law of 1870, at the same time called an extra session of the legislature to convene on the 9th day of December, A. D. 1872, the regular session being that to begin in January, 1873.

Warmoth was the regularly constituted governor of Louisiana. The only board of returning officers in existence having the semblance of law to sustain a legal character was the De Feriet board, appointed by him. This board, and only this board, had canvassed the official, regular returns of the election, and announced the result, and gave certificates of election. It was well known that the governor, wielding the whole executive authority of Louisiana, would recognize the members as returned elected by the De Feriet board to be rightfully entitled to organize the legislature; that the members would meet on the 9th of December, as was directed by his proclamation, and organize the legislature; and that it would be recognized as the legislature of that State, as it would be in right and in fact the legislature. It was well known that that organization would run into the regular session, and that, continuing the legislature of this State, the returns as examined by the De Feriet board would be submitted to it, and that McEnery would have been declared elected, and would have peaceably entered into the exercise of the office of governor, which would, of course, have closed the career of Kellogg, Pinchback, and their associates for the present in this respect.

All this was well apprehended by Kellogg and his associates. The State courts had failed them, and the determination was to resort to another and a stronger tribunal. Kellogg, Pinchback, and Packard determined to enlist the courts of the United States in their behalf. So early as the 16th of November William Pitt Kellogg filed his bill in the circuit court of the United States for the district of Louisiana against Governor Warmoth and others, ostensibly for the purpose of preserving or perpetuating the evidence of the official returns of the election, then in the hands of Warmoth, or under his control, and praying, among other things, for an injunction. On the day following, the injunction was issued as prayed by the bill.

On the 20th November the defendants answered the bill, and the case rested until the 5th of December.

On the 4th of December Governor Warmoth issued the proclamation before cited, whereupon the judge, E. H. Durell, without any application or motion whatever made in the cause, issued the following order:

"Circuit court of the United States, fifth circuit and district of Louisiana, in equity.

"WILLIAM P. KELLOGG
vs.
'H. C. WARMOTH ET AL. } No. 6830.

"Whereas Henry C. Warmoth, one of the respondents herein, has, in violation of the restraining order herein, issued the following proclamation and returns of certain persons claiming to be a board of returning officers, all in violation and contempt of said restraining order, as follows, viz, &c., &c.:

"Now, therefore, in order to prevent the further obstruction of the proceedings in this cause, and, further, to prevent a violation of the orders of this court, to the imminent danger of disturbing the public peace, it is hereby ordered that the marshal of the United States for the district of Louisiana shall forthwith take possession of the building known as the Mechanics' Institute, and occupied as the State-house for the assembling of the legislature therein, in the city of New Orleans, and hold the same subject to the further order of this court, and meanwhile to prevent all unlawful assemblage therein under the guise or pretext of authority claimed by virtue of pretended canvass and returns made by said pretended returning officers in contempt and violation of said restraining order; but the marshal is directed to allow the ingress and egress to and from the public offices in said building of persons entitled to the same.

"E. H. DURELL."

This was done on the night of the 5th of December and at 2 o'clock on the morning of the 6th of December Marshal Packard, with a detachment of United States soldiers, seized the State-house and held it for weeks.

Under that order this pretended legislature was organized, and the members only who were returned by the Lynch board were permitted to enter the hall or participate in the organization. This organization continued to be protected by the military power of the United States through the extra session into the regular, which began its session on the 6th day of January, and all the time under the protection of the military authority of the United States, and, indeed, which protection has continued to this day. It will be proper to observe that Kellogg commenced his proceedings in the United States courts on the 16th of November. A few days thereafter, on the 27th of November, Kellogg writes to Attorney-General Williams the following:

"I therefore respectfully suggest that General Emory, who I think appreciates the necessity and sympathizes with the Republican party here, be instructed to comply with any requisition that the United States courts may make upon him in support of its mandates and to preserve peace. As at present advised, I think General Emory understands that he is to use the troops in no contingency without instructions from Washington."

On December 3 the following order was received from Washington:

DEPARTMENT OF JUSTICE, *December* 3, 1872.

S. B. PACKARD, Esq.,
United States Marshal, New Orleans, La.:

You are to enforce the decrees and mandates of the United States courts, no matter by whom resisted, and General Emory will furnish you with all necessary troops for that purpose.

GEO. H. WILLIAMS,
Attorney-General.

On the night of the 5th of December the mandate of Judge Durell was made, and on the morning of the 6th the military, in pursuance of the order of Attorney-General Williams, seized the State-house, and the plot to seize the State government of Louisiana was consummated.

The simple detail of these facts ought to be sufficient in themselves to characterize the whole transaction without any illustration upon our part. There was not a step taken in the whole proceeding that is to be justified; there is no single act to be supported by any resort to reason, law, or justice. The reckless assumption of Judge Durell to interpose in matters wholly belonging to the State authorities, and in terms prohibited from doing what he did by the very law of Congress under which he pretended to derive authority to act, is beyond all precedent, and one cannot adequately characterize it in language to be used here. The atrocity of his action in directing the marshal of the United States to seize the State-house, where the legislature of the State was to convene, and further directing him to allow certain of its members only to enter it, has but few parallels anywhere, and none before in American history. The whole proceeding from its inception down to its final consummation was a gross usurpation accompanied with every species of fraud and tyranny. The body that was organized under this mandate and its military enforcement is not entitled to any legal existence that any American should acknowledge. The whole is a product of fraud, conspiracy, and of armed force, and is entitled to no consideration.

We wish it to be remembered that we are not inquiring into the component parts of a legislative body. Each house of the legislature must do that for itself. We are inquiring into the aggregate character of the body as organized and as it represents itself to be—a legislature; how it was brought into being; how supported; and under what authority. We find no single element in it to constitute it a legislature representing the free people of Louisiana under their constitution and laws; but, on the contrary, simply a body organized under the mandate of a Federal judge supported by the armed force of the United States, based upon a pretended election found by a returning board without a single official return, and not having a tittle of authority, and acting in violation and in defiance of all law. We find that body, pretending to be the legislature of Louisiana, the mere creature of a conspiracy as bold, as reckless, and as wicked as any that has ever disgraced the annals of history. We speak thus strongly because our instincts as American citizens prompt us to the reprobation it so signally deserves. This body thus organized chose P. B. S. Pinchback a Senator in Congress for the period he claims.

The large mass of the members of it were never elected in fact; the returning board declaring them to be elected had not a single power to do so; it never had an official return before it. Judge Durell had no power to issue his mandate and the troops had no

right to enforce it. In the whole tragedy of events, as each succeeded the other, there was not one single act that could for a moment give a color of right to any other. Every one was an undoubted wrong, crime, or usurpation, and yet all combined, and nothing else, organized this body and kept it in being. Can such a body, we ask, so organized, put upon the Senate and upon the people of Louisiana their creature, and he one of the main conspirators? Kellogg, Pinchback, Casey, Packard, Durell, and Williams—names indelibly written upon every page of this most unnatural history of political crime and folly! There is not a single act in the whole proceeding to mitigate the unqualified condemnation it must receive at the hands of every honest man and of every sincere lover of American liberty and of constitutional government.

We have stated that the Lynch board, pretending to canvass the returns, had no legal existence; that no official returns were before it to canvass; that the order of Judge Durell was not only void for want of jurisdiction, but that it was a gross usurpation. To sustain all this it is not necessary to depend upon our own declarations; but we recur, and with pleasure, to the able report so often referred to. In addition to what we have already quoted upon this subject, we give the following. In speaking of this order of Judge Durell, and in connection with it of the De Feriet board, the committee say on page 17:

"It is impossible to conceive of a more irregular, illegal, and in every way inexcusable act on the part of a judge. Conceding the power of the court to make such an order, the judge out of court had no more authority to make it than had the marshal. It has not even the form of judicial process. It was not sealed, nor was it signed by the clerk, and had no more legal effect than an order issued by any private citizen.

"There had been no amendment of the bill of complaint. The law of November 20 had been promulgated. The De Feriet board had been appointed in pretended pursuance thereof. Whether, under the constitution, the governor had the power, in the vacation of the legislature, to appoint that board, upon the ground that the act of November 20 created offices, and therefore vacancies in office, your committee do not inquire. But it is understood that the constitution has been so construed in that State, and that Judge Dibble was appointed by the governor under similar circumstances.

"The De Feriet board, therefore, had color of official existence. Their canvass was completed and the result promulgated under color of the State law, and it is clear that this gave the Federal court no more right to seize the State-house than to seize the Capitol."

Further, in speaking of Judge Durell, the committee say on page 27:

"Viewed in any light in which your committee can consider them, the orders and injunctions made and granted by Judge Durell in this cause are most reprehensible, erroneous in point of law, and are wholly void for want of jurisdiction; and your committee must express their sorrow and humiliation that a judge of the United States should have proceeded in such flagrant disregard of his duty, and have so far overstepped the limits of Federal jurisdiction."

Again, on page 28, the committee say:

"But for the interference of Judge Durell in the matter of this State election, a matter wholly beyond his jurisdiction, the McEnery government would to-day have been the *de facto* government of the State. Judge Durell interposed the Army of the United States between the people of Louisiana and the only government which has the semblance of regularity, and the result of this has been to establish the Kellogg government, so far as that State now has any government. For the United States to interfere in a State election, and by the employment of troops set up a governor and legislature without a shadow of right, and then to refuse redress of the wrong upon the ground that to grant relief would be interfering with the rights of the State, is a proposition difficult to utter with a grave countenance. Besides, it is impossible to determine to what extent the supreme court may have been influenced in rendering this decision by the fact that the Kellogg government, the creation of the Lynch board, had already been established, and the expectation that it would be sustained by Federal authority."

Again, the committee, in discussing another point of the subject, allude incidentally to the manner in which the Kellogg legislature was organized. The committee say, on page 47 of their report:

"In November, 1872, Judge Howe, of the supreme court, resigned, and Governor Warmoth commissioned J. H. Kennard to fill the vacancy. After the Kellogg legislature was organized under Judge Durell's injunction, enforced by United States troops, the house of representatives of that legislature pretended to impeach and suspend Governor Warmoth, whereupon Pinchback, who had been elected president of the senate in place of Lieutenant-Governor Dunn, deceased, which under the constitution made him lieutenant-governor, proclaimed himself acting governor in place of Warmoth, impeached and suspended. Pinchback afterward nominated Morgan, who was confirmed by the senate, to fill the same vacancy."

Also, we cannot refrain from giving the following from the chairman of the committee, Mr. Morton, who in a dissenting opinion used this language respecting Judge Durell and his official conduct:

"The conduct of Judge Durell, sitting in the circuit court of the United States, cannot be justified nor defended. He grossly exceeded his jurisdiction, and assumed the exercise of powers to which he could lay no claim. * * *

"But the pretense that in a suit to perpetuate testimony the court could go beyond the natural and reasonable jurisdiction to decide who constituted the legal returning board under the laws of Louisiana, and to enforce the rights of such as it might determine to be members of that board and to enjoin others who were not, is without any foundation in law or logic.

"In the Antoine case Judge Durell not only assumed to determine who constituted the legal returning board, but to prescribe who should be permitted to take part in the organization of the legislature and to enjoin all persons from taking part in such organization who were not returned by the Lynch board as elected; and this assumption of jurisdiction was made in the face of the express provision in the act of 1870 that its benefits should not extend to candidates for electors, for Congress, or for the State legislature. His order, issued in the Kellogg case to the United States marshal to take possession of the State-house for the purpose of preventing unlawful assemblages, under which the marshal called to his aid a portion of the Army of the United States as a posse comitatus, can only be characterized as a gross usurpation."

Thus it appears that the whole committee regarded the acts of Judge Durell as a gross usurpation; yet upon that act alone rests the organization of the Kellogg legislature. A body thus organized and thus constituted, as shown by all the facts in the case, is not entitled to any respect, and particularly is not entitled to impose a Senator upon this chamber, upon the country, and especially upon the people of Louisiana, as their representative upon this floor. In contrast with this body, we know there was a rival body, a rival State government, so far as the State and local officers were concerned; a rival government, too, not depending upon armed forces for organization and existence. A government, though not in active power, was still in being. That rival government, the facts most conclusively show, depended for its legal existence—

First. Upon the official returns of the votes cast at the regular election, and canvassed and counted by a board of returning officers known as the De Feriet board, appointed by the governor, as he claimed he had the right to do under the act of November 20, 1872, and the board, in the opinion of the undersigned, that possessed the power to canvass the returns.

Second. Upon the official returns as canvassed and counted by the board elected by the senate of the McEnery legislature, as provided under the same act, and known as the Forman board.

Third. Upon the undoubted fact that the official returns were true and gave the results as ascertained by both boards.

Fourth. Upon the undoubted fact that the people of Louisiana are satisfied that their real will was expressed in these official returns, and that this—the McEnery—is their chosen government.

Fifth. Upon the undoubted fact that nothing could have prevented its going into peaceful operation and being the government to-day, except for the interposition of Judge Durell and his associates in that crime, supported by the armed forces of the United States.

Upon the other hand, the Kellogg government depends—

First. Upon the canvass of a returning board having no authority and having no official returns to canvass.

Second. Upon the illegal order of Judge Durell, and the enforcement of it by United States troops.

Third. Upon the military protection of the United States, and upon that protection alone, as it is an undoubted fact that the withdrawal of this protection would result in an instant dissolution and dispersion of his government.

Can the Senate hesitate to determine between such governments? The interposition of mere force without cause and without right, by which one for the present may be put up and the other down, should not deter us in determining which is the rightful one. The soldiers of the United States should not be allowed to step in between our judgment and our duty. The day is not yet upon us, we trust, when the sword is to settle questions alone for us to determine. Taking all the facts as they appear in the case before us, from the inception of each rival body to the final consummation in their respective organizations, we can determine between them. It is our duty to do so; and we have facts sufficiently numerous and authentic to determine fairly and intelligently between them. Each has chosen Senators, and both are here with certificates.

There can be no doubt that where there are rival bodies, each claiming to be the right-

ful legislature of a State, and each presenting a Senator for admission upon this floor, we must judge between them, for the reason that we are to judge of the elections, the qualifications, and returns of our own members; and in this we are to know whether the body choosing a Senator is the legislature having the constitutional right to do so, and that such an one did choose a Senator.

This was clearly submitted in the case of Robbins and Potter, contesting Senators from Rhode Island. Mr. Poindexter, who submitted the majority report in that case, says:

"There was but one governor and but one senate in the State claiming to be a part of the general assembly. If there had existed another body of men, however chosen, contending for the offices of the governor and senators in the State, it will not be denied that their respective rights might be the subject of inquiry in deciding a contested election in the Senate of the United States."

The right of the Senate is undoubted to judge in this respect. Its power is not limited, for the sound reason that its independence can only be absolutely preserved in possessing such a right. In exercising it here, we should not be capricious, but governed in our conduct by rules that good sense, honest intention, and a desire for truth and justice should naturally inspire. No other department of the Government ought to control it; no other department of the Government should be allowed, under any pretext or in the exercise of any power, to trench upon it. It is a primary right, for in its free and absolute exercise the very life, existence, and organization of free legislative bodies depend.

Coming to the main point again, should the Senate hesitate between the rival governments? How can the Senate recognize the Kellogg government, stamped, as it is, all over with fraud, conspiracy, and force? There is not an element of free constitutional government in it. Mere intruders and usurpers in all departments of it, how shall the Senate, in respect for constitutional government, admit that such a body as that organized under the order of Durell shall impose upon us a Senator? We might receive with just as much plausibility and complacency a Senator from the soldiery who guarded that body when it went through the forms of choosing one. The bayonet organized it, kept it in being, protected it by day and by night, and without it no one would be here pressing a claim to a seat by virtue of any authority from it.

Speaking for ourselves, we cannot in any manner acknowledge any such election. We cannot give any respect or efficacy to the certificate under consideration as that of a rightful governor, and must, therefore, declare that in our opinion P. B. S. Pinchback is not entitled to a seat as a Senator from the State of Louisiana.

It is said that the Senate is bound, or ought to be bound, by decisions of the judicial tribunals of the State when inquiring into the existence of a government or of its officers; also by the action of other departments of the State government; also by the late act of the President and by reason of the possession of the office for a length of time. We shall only briefly remark that this body is bound by nothing in the exercise of its undoubted power. But admitting that any or all of these combined should have more or less influence upon the judgment of the Senate in coming to conclusions, we may be permitted to say that, in regard to the judicial action of the courts of Louisiana in relation to this subject, the question in issue never was fairly presented, and with the further remark that it is painfully evident that a majority of the court deciding cases having relevancy at all to the subject was in complicity with the Kellogg government to maintain its power; and so with the other departments of the State government, for all depended for their very existence upon the official being of Kellogg. As to the action of the President having any binding force upon the Senate, we say that his power to act relates alone to one thing, and that is the suppression of violence when legally called upon for aid in suppressing such violence. His action cannot bind beyond the simple fact and its real dependents; it decides no right for us or for Congress. One word as to the continuous possession of Kellogg, and which it is claimed gives him some standing to be considered in this body. His possession is that of fraud and force, and this possession is to-day only held by this force. It is the possession of might against right, and the weakness of the title will at once be witnessed upon the withdrawal of the force which keeps him in place. In our opinion, there is nothing in the matters that would be set up to secure a recognition of the Kellogg government. The whole is a crime against our civilization and a blot upon our free institutions.

WILLIAM T. HAMILTON.
ELI SAULSBURY.

THURSDAY, *February* 11, 1875.

Mr. Hamilton, of Maryland, submitted the views of the minority of the Committee on Privileges and Elections, to whom were referred the credentials of P. B. S. Pinchback; which were ordered to be printed, to accompany the report.

[See Report No. 626, submitted February 8, 1875.]

MONDAY, *February* 15, 1875.

On motion by Mr. Morton, the Senate proceeded to the consideration of the resolution reported by the Committee on Privileges and Elections on the 8th instant, that P. B. S. Pinchback be admitted as a Senator from the State of Louisiana for the term of six years beginning on the 4th of March, 1873.

Pending debate,

A message from the House, &c.

[The debate is found on pages 1277-1289 of the Congressional Record, vol. iii, part 2.]

TUESDAY, *February* 16, 1875.

The Senate resumed, &c.

[The debate is found on pages 1306-1310 of the Congressional Record, vol. iii, part 2.]

WEDNESDAY, *February* 17, 1875.

The Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to admit P. B. S. Pinchback to a seat in the Senate as a Senator from the State of Louisiana; and,

After further debate,

On motion by Mr. Morrill, of Maine, at 3 o'clock and 45 minutes p. m. (Thursday), that the resolution lie on the table, it was determined in the affirmative—yeas 39, nays 22.

On motion by Mr. Morton, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Anthony, Bayard, Bogy, Conkling, Cooper, Davis, Dennis, Eaton, Edmunds, Fenton, Frelinghuysen, Goldthwaite, Gordon, Hager, Hamilton of Maryland, Hamilton of Texas, Ingalls, Johnston, Kelly, McCreery, Merrimon, Morrill of Maine, Morrill of Vermont, Norwood, Ransom, Robertson, Saulsbury, Schurz, Scott, Sprague, Stevenson, Stockton, Thurman, Tipton, Wadleigh, Washburn, Windom, and Wright.

Those who voted in the negative are Messrs. Boreman, Cameron, Chandler, Clayton, Conover, Cragin, Ferry of Michigan, Flanagan, Hamlin, Harvey, Howe, Jones, Logan, Morton, Oglesby, Patterson, Pratt, Ramsey, Sargent, Spencer, Stewart, and West.

So the motion was agreed to.

[The debate is found on pages 1327-1353, 1358-1382 of the Congressional Record, vol. iii, part 2.]

THURSDAY, *February* 18, 1875.

Mr. Boutwell presented a memorial of citizens of Massachusetts in favor of the admission of P. B. S. Pinchback as a member of the United States Senate from the State of Louisiana.

[Special session of Senate, March, 1875.]

FRIDAY, *March* 5, 1875.

Mr. Morton submitted the following resolution:

"*Resolved*, That P. B. S. Pinchback be admitted as a Senator from the State of Louisiana for the term of six years beginning on the 4th of March, 1873."

Ordered, That it lie on the table and be printed.

MONDAY, *March* 8, 1875.

The Senate proceeded to consider the resolution providing for the admission of P. B. S. Pinchback to a seat in the Senate as a Senator from the State of Louisiana; and,

Pending debate,

On motion by Mr. Sherman, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 3-7 of the Congressional Record, vol. iv, part 1.]

TUESDAY, *March* 9, 1875.

The Senate resumed, &c.

[The debate is found on pages 9-17 of the Congressional Record, vol. iv, part 1.]

WEDNESDAY, *March* 10, 1875.

The Senate resumed, &c.

[The debate is found on pages 17-25 of the Congressional Record, vol. iv, part 1.]

FRIDAY, *March* 12, 1875.

The Senate resumed, &c.

[The debate is found on pages 32-41 of the Congressional Record, vol. iv, part 1.]

SATURDAY, *March* 13, 1875.

The Senate resumed, &c.; and,

On motion by Mr. Edmunds to amend the resolution by inserting the word "not" before the word "admitted,"

Pending debate,

On motion by Mr. Conkling, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 41–53 of the Congressional Record, vol. iv, part 1.]

MONDAY, *March* 15, 1875.

The Senate resumed, &c.; and

The question being on the amendment proposed by Mr. Edmunds, viz, insert the word "not" before the word "admitted,"

Pending debate,

On motion by Mr. Morton, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 55–62 of the Congressional Record, vol. iv, part 1.]

TUESDAY, *March* 16, 1875.

The Senate resumed the consideration of the resolution to admit P. B. S. Pinchback to a seat in the Senate as a Senator from the State of Louisiana; and,

After debate,

On motion by Mr. West that the further consideration thereof be postponed to the second Monday in December next, it was determined in the affirmative—yeas 33, nays 30.

On motion by Mr. West, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Alcorn, Allison, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Clayton, Conover, Cragin, Dawes, Dorsey, Ferry of Michigan, Frelinghuysen, Hamilton, Hamlin, Harvey, Howe, Ingalls, Jones of Nevada, McMillan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Paddock, Patterson, Sargent, Sherman, Spencer, West, and Windom.

Those who voted in the negative are Messrs. Bayard, Bogy, Booth, Caperton, Christiancy, Cockrell, Cooper, Davis, Eaton, Goldthwaite, Gordon, Hitchcock, Johnson of Tennessee, Johnston of Virginia, Jones of Florida, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Thurman, Wallace, Whyte, and Withers.

So the motion was agreed to.

[The debate is found on pages 62–91 of the Congressional Record, vol. iv, part 1.]

[First session of the Forty-fourth Congress.]

THURSDAY, *December* 9, 1875.

Mr. West presented a letter* of W. L. McMillen, asking permission to withdraw from the files of the Senate his credentials as Senator-elect from the State of Louisiana, and submitted the following order:

Ordered, That the request of W. L. McMillen, heretofore claiming a seat in the Senate from the State of Louisiana, for the return of his credentials be granted.

TUESDAY, *December* 14, 1875.

Ordered, That the request of William L. McMillen, heretofore claiming a seat in the Senate from the State of Louisiana, for the return of his credentials be granted.

After debate,

On the question to agree thereto, it was determined in the affirmative—yeas 30, nays 28.

On motion by Mr. Howe, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Boutwell, Bruce, Burnside, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Conover, Cragin, Edmunds, Ferry, Frelinghuysen, Hamlin, Harvey, Hitchcock, Howe, Ingalls, McMillan, Morrill of Vermont, Morton, Paddock, Patterson, Robertson, Sargent, Sherman, Spencer, West, Windom, and Wright.

Those who voted in the negative are Messrs. Bayard, Bogy, Caperton, Cockrell, Cooper, Davis, Dawes, Eaton, English, Goldthwaite, Gordon, Johnston, Jones of Florida, Kelly,

* A copy of the letter is found on page 190 of the Congressional Record, vol. iv, part 1.

Kernan, Key, McCreery, McDonald, Merrimon, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Thurman, Wallace, Whyte, and Withers.

So it was

Ordered, That the request of Mr. McMillen be granted, and that his credentials be returned to him by the Secretary.

[The debate is found on pages 200-204 of the Congressional Record, vol. iv, part 1.]

CREDENTIALS OF MR. MARR.

MONDAY, *December* 20, 1875.

Mr. Bayard presented a paper signed by John McEnery as governor of Louisiana and purporting to be the credentials of Robert H. Marr, appointed a Senator to fill the vacancy occasioned by the resignation of William L. McMillen.

Ordered, That it lie on the table.

CREDENTIALS OF MR. EUSTIS.

TUESDAY, *January* 18, 1876.

Mr. Thurman presented papers purporting to be the credentials of J. B. Eustis as a Senator from the State of Louisiana for the term ending March 3, 1879.

Ordered, That they lie on the table.

[The debate and a copy of the credentials are found on pages 451-455 of the Congressional Record, vol. iv, part 1.]

MONDAY, *January* 24, 1876.

On motion by Mr. Morton,

Ordered, That the papers purporting to be the credentials of J. B. Eustis as a Senator from the State of Louisiana be referred to the Committee on Privileges and Elections.

WEDNESDAY, *January* 26, 1876.

Mr. West presented a memorial* of certain State senators of Louisiana in relation to the election of Hon. James B. Eustis as United States Senator from that State; which was referred to the Committee on Privileges and Elections, and ordered to be printed.

FRIDAY, *January* 28, 1876.

Mr. Morton, from the Committee on Privileges and Elections, to whom were referred papers purporting to be credentials of J. B. Eustis, claiming a seat in the Senate as a Senator from the State of Louisiana, submitted the following report:

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Morton (chairman), Logan, Mitchell, Wadleigh, Cameron of Wisconsin, McMillan, Saulsbury, Merrimon, and Cooper.]

The Committee on Privileges and Elections, to whom were referred the papers relating to the election of J. B. Eustis to a seat in this body by the legislature of the State of Louisiana, beg leave to report:

That in their opinion there is no vacancy in the office of Senator from the State of Louisiana, P. B. S. Pinchback having been elected in January, 1873, to the term beginning on the 4th of March, 1873. They therefore recommend that the papers relating to Mr. Eustis be laid upon the table.

THURSDAY, *February* 3, 1876.

On motion by Mr. Morton, the Senate proceeded to consider the resolution submitted by him March 5, 1875, for the admission of P. B. S. Pinchback to a seat in the Senate as a Senator from the State of Louisiana; and,

On motion by Mr. Edmunds, the Senate proceeded to the consideration of executive business.

FRIDAY, *February* 4, 1876.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Edmunds, viz, before the word "admitted," in the said resolution, insert the word "not,"

Pending debate,

On motion by Mr. Cameron, of Pennsylvania, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 886-889 of the Congressional Record, vol. iv, part 1.]

* Found in Senate Miscellaneous, 44th Cong., 1st sess., No. 41.

MONDAY, *February* 7, 1876.

The Senate resumed, &c.

[The debate is found on pages 907–913 of the Congressional Record, vol. iv, part 1.]

TUESDAY, *February* 8, 1876.

The Senate resumed, &c.

[No debate took place.]

MONDAY, *February* 14, 1876.

The Senate resumed, &c.

[The Congressional Record states (page 1065, vol. iv, part 2) that Mr. Morton's speech made this day would be printed in the Appendix, but it does not appear there.]

WEDNESDAY, *March* 1, 1876.

The Senate resumed, &c.

[The debate is found on pages 1382–1392 of the Congressional Record, vol. iv, part 2.]

THURSDAY, *March* 2, 1876.

The Senate resumed, &c.

[No debate took place.]

FRIDAY, *March* 3, 1876.

The Senate resumed, &c.

[The debate is found on pages 1436–1444 of the Congressional Record, vol. iv, part 2.]

MONDAY, *March* 6, 1876.

The Senate resumed, &c.

[No debate took place.]

TUESDAY, *March* 7, 1876.

The Senate resumed, &c.

[The debate is found on pages 1511–1516 of the Congressional Record, vol. iv, part 2.]

WEDNESDAY, *March* 8, 1876.

The Senate resumed the consideration of the resolution to admit P. B. S. Pinchback to a seat in the Senate as a Senator from the State of Louisiana; and,

The question being on the amendment proposed by Mr. Edmunds, viz, before the word "admitted" in the said resolution insert the word "not,"

After debate, it was determined in the affirmative—yeas 32, nays 29.

On motion by Mr. Edmunds, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Caperton, Christiancy, Cockrell, Cooper, Davis, Dennis, Eaton, Edmunds, English, Gordon, Johnston, Jones of Florida, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Morrill of Maine, Morrill of Vermont, Norwood, Paddock, Randolph, Ransom, Saulsbury, Stevenson, Thurman, Wallace, Whyte, and Withers.

Those who voted in the negative are Messrs Allison, Anthony, Boutwell, Bruce, Cameron of Pennsylvania, Conkling, Conover, Cragin, Dorsey, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morton, Patterson, Sargent, Sharon, Sherman, Spencer, West, and Windom.

So the amendment was agreed to.

On the question to agree to the resolution as amended, it was determined in the affirmative—yeas 32, nays 29.

On motion by Mr. Morton, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Caperton, Christiancy, Cockrell, Cooper, Davis, Dennis, Eaton, Edmunds, English, Gordon, Johnston, Jones of Florida, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Morrill of Maine, Morrill of Vermont, Norwood, Paddock, Randolph, Ransom, Saulsbury, Stevenson, Thurman, Wallace, Whyte, and Withers.

Those who voted in the negative are Messrs. Allison, Anthony, Boutwell, Bruce, Cameron of Pennsylvania, Conkling, Conover, Cragin, Dorsey, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morton, Patterson, Sargent, Sharon, Sherman, Spencer, West, and Windom.

So it was

Resolved, That P. B. S. Pinchback be not admitted as a Senator from the State of Louisiana for the term of six years beginning on the 4th of March, 1873.

[The debate is found on pages 1545–1558 of the Congressional Record, vol. iv, part 2.]

[Special session of Senate, March, 1877.]

THURSDAY, *March* 8, 1877.

Mr. Thurman submitted the following resolution for consideration:

"*Resolved*, That the credentials of J. B. Eustis, claiming to be a Senator from the State of Louisiana, be taken from the files and referred to the Committee on Privileges and Elections when that committee shall be appointed."

FRIDAY, *March* 9, 1877.

On motion by Mr. Thurman, the Senate proceeded to consider the resolution yesterday submitted by him for the reference of the credentials of J. B. Eustis to the Committee on Privileges and Elections; and

The resolution was agreed to, as follows:

"*Resolved*, That the credentials of J. B. Eustis, claiming to be a Senator from the State of Louisiana, be taken from the files and referred to the Committee on Privileges and Elections."

[First session of the Forty-fifth Congress.]

THURSDAY, *October* 18, 1877.

Mr. Thurman submitted a motion that Mr. J. B. Eustis be now sworn as a Senator from the State of Louisiana for the term expiring March 3, 1879.

Mr. Conkling objected to the consideration of the motion, and raised the question of order, viz, that the credentials of Mr. Eustis having been referred to the Committee on Privileges and Elections at the last special session of the Senate and not having been reported upon, were not before the Senate, but still in possession of the committee under the fifty-ninth rule, which prescribes that all subjects referred to committees and not reported upon at the close of a session of Congress shall be returned to the office of the Secretary, to be by him retained until the next session, when they shall be returned to the several committees.

The Vice-President submitted the question of order to the Senate in the following words:

"Shall all subjects referred to committees and not reported upon at the close of the last preceding session of this body, in March last, and returned to the office of the Secretary of the Senate, be referred to the several committees to which they had previously been referred?"

And it was determined in the affirmative.

On motion by Mr. Thurman that the Committee on Privileges and Elections be discharged from the further consideration of the credentials of J. B. Eustis,

Mr. Edmunds objected to the consideration of the motion this day.

When,

On motion by Mr. Thurman (at 3 o'clock and 16 minutes p. m.), the Senate adjourned.

[The debate is found on pages 107, 108 of the Congressional Record, vol. vi.]

FRIDAY, *October* 19, 1877.

The Senate proceeded to consider the motion yesterday submitted by Mr. Thurman to discharge the Committee on Privileges and Elections from the further consideration of the credentials of J. B. Eustis; and,

After debate,

On motion by Mr. Thurman,

Ordered, That the motion lie on the table.

[The debate is found on pages 109–115 of the Congressional Record, vol. vi.]

SATURDAY, *December* 1, 1877.

Mr. Wadleigh, from the Committee on Privileges and Elections, to whom were referred papers purporting to be credentials of James B. Eustis, claiming a seat as a Senator from the State of Louisiana, reported the following resolution:

"*Resolved*, That James B. Eustis is lawfully entitled to a seat in the Senate of the United States from the State of Louisiana, from the 12th day of January, 1876, for the term ending March 3, 1879; and that he be admitted thereto upon taking the proper oath."

Mr. Ingalls asked and obtained leave of the Senate to submit the views* of a minority of the Committee on Privileges and Elections on the papers purporting to be credentials

* Never submitted.

of James B. Eustis, claiming a seat in the Senate as a Senator from the State of Louisiana.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Wadleigh (chairman), Mitchell, Cameron of Wisconsin, McMillan, Hoar, Ingalls, Saulsbury, Merrimon, and Hill.]

IN THE SENATE OF THE UNITED STATES.

DECEMBER 1, 1877.—Ordered to be printed.

Mr. Wadleigh, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom were referred the credentials of James B. Eustis for a seat in the Senate of the United States from the State of Louisiana for the term of six years commencing March 4, 1873, ask leave to submit the following report:

Mr. Eustis claims to have been elected on the 12th of January, 1876. The body which elected him was that formed by what is known as the Wheeler compromise; and there is no doubt that it was the lawful legislature of Louisiana.

Two questions arise in this case: First, whether Mr. Eustis was lawfully elected; second, whether at the time of his election a vacancy existed which the legislature of Louisiana had the right to fill.

The legislature of Louisiana on the 12th day of January, 1876, consisted of a house containing one hundred and eleven members and a senate with thirty-six senators. On the 11th day of January, 1876, the house voted to go into an election for United States Senator, and the senate on the same day refused to do so. On the 12th day of January, it appearing that there had been no election on the day before, sixty-four members of the house and twelve members of the senate, being a majority of all entitled to seats in both houses, met in joint convention and elected Mr. Eustis.

Your committee find that although the senate refused to take part as such in said election, and although a minority of the senate only did take part in it, yet there was a substantial compliance with the act of Congress of 1866. Upon the constitutionality of that act your committee express no opinion. The Senate has repeatedly, however, by its action affirmed its constitutionality; and your committee feel bound by the precedents which the Senate has established.

The second question, whether or not a vacancy existed at the time of Mr. Eustis's election which the legislature of Louisiana had the right to fill, is one of some difficulty. At the time of said election Mr. P. B. S. Pinchback was the claimant for the same seat under two elections—one in 1873, the other in 1875. His credentials and claims under said elections had been presented to the Senate and by it referred to the Committee on Privileges and Elections. Said committee, on the 5th day of March, 1875, reported a resolution to the Senate that Mr. Pinchback be admitted thereto. On the 8th day of March, 1876, that resolution was amended so as to change it to a resolution that he be not admitted. The resolution was passed as thus amended on the same day.

Your committee feel bound to regard that vote of the Senate as a final adjudication of the claims of Mr. Pinchback and a decision that he had no right to a seat. Mr. Eustis's election took place while Mr. Pinchback's case was pending in the Senate, and it may be contended with much force that until the final adjudication by the Senate of Mr Pinchback's claims there was no vacancy which the legislature was authorized to fill.

This question arose at the first session of the Twenty-third Congress, in the case of Potter *vs.* Robbins, where a majority of the special committee of the Senate held that the legislature of Rhode Island had no authority to proceed to the election of another Senator until the seat of the Senator-elect had been vacated by a solemn decision of the Senate of the United States. Silas Wright, of New York, made a report in behalf of the minority of said committee, in which it was contended that if the election of Mr. Robbins was not made by the lawful legislature of the State it was absolutely void, and that therefore Mr. Potter's election while Mr. Robbins's claim to a seat in the Senate was still pending was valid.

Your committee do not question the soundness of the rule laid down in that case, but are not disposed to apply it to this case, where the circumstances are very different. In the case of Potter *vs.* Robbins, Mr. Robbins had been admitted to the Senate, the committee had before it both his credentials and those of Mr. Potter; but here there is no contest. The Senate never admitted Mr. Pinchback to his seat, but decided that he had no right thereto.

This seat has long been vacant. Mr. Eustis is the only person who appears to claim it. The lawful character of the legislature which elected him is admitted. His election

was substantially in compliance with the law of Congress. No one appears to contest his right to a seat. Under these circumstances your committee believe that Mr. Eustis should be admitted to the Senate, and report a resolution to that effect and recommend its passage.

[Second session of the Forty-fifth Congress.]

MONDAY, *December* 10, 1877.

On motion by Mr. Wadleigh, the Senate proceeded to consider the resolution reported by the Committee on Privileges and Elections declaring James B. Eustis entitled to a seat in the Senate as a Senator from the State of Louisiana; and,

After debate,

On the question to agree to the resolution, as follows:

"*Resolved*, That James B. Eustis is lawfully entitled to a seat in the Senate of the United States from the State of Louisiana, from the 12th day of January, 1876, for the term ending March 3, 1879, and that he be admitted thereto upon taking the proper oath,"

It was determined in the affirmative—yeas 49, nays 8.

On motion by Mr. Ingalls, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Bailey, Barnum, Bayard, Beck, Booth, Bruce, Burnside, Chaffee, Christiancy, Cockrell, Coke, Davis of West Virginia, Dawes, Dorsey, Eaton, Ferry, Garland, Gordon, Harris, Hereford, Hill, Johnston, Jones of Florida, Jones of Nevada, Kernan, Kirkwood, Lamar, McCreery, McDonald, McPherson, Matthews, Maxey, Merrimon, Mitchell, Morgan, Oglesby, Paddock, Patterson, Plumb, Randolph, Ransom, Saulsbury, Teller, Thurman, Voorhees, Wadleigh, Wallace, and Withers.

Those who voted in the negative are Messrs. Allison, Cameron of Wisconsin, Hamlin, Howe, Ingalls, McMillan, Morrill, and Saunders.

So the resolution was agreed to.

Mr. Eustis then appeared, and the oaths prescribed by law having been administered to him by the Vice-President, he took his seat in the Senate.

[The debate is found on pages 82-87 of the Congressional Record, vol. vii, part 1.]

COMPENSATION OF MR. PINCHBACK.

MONDAY, *April* 17, 1876.

Mr. Mitchell, from the Committee on Privileges and Elections, submitted a report (No. 274), accompanied by the following resolution. [Resolution found at end of report.]

REPORT OF COMMITTEE.

IN THE SENATE OF THE UNITED STATES.

APRIL 17, 1876.—Ordered to be printed.

Mr. Mitchell, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, having under consideration the question of the allowance proper to be made to P. B. S. Pinchback, late a contestant for a seat in the Senate from the State of Louisiana, submit the following report:

The great length of time that elapsed between the beginning of the term for which Mr. Pinchback was a contestant and the date of the final determination of that contest by the Senate, as also the remarkably close vote by which such contest was decided, have impressed your committee with the belief that the full measure of compensation which the uniform action of the Senate heretofore has given to contestants should be allowed in this case.

Your committee are advised by the journals of the Senate that the rule established by this body in similar cases is the payment to the contestant of the amount he would have been entitled to receive in case he had been admitted and served the time the contest was pending; in other words, an amount equal to the compensation and mileage of a Senator for the time covered by the contest.

A few citations will suffice to show the uniformity of this rule.

O. B. Hart, contesting the seat of A. Gilbert, of Florida, was paid from the contingent fund from the 1st to 29th of April, 1870, under the following resolution, passed May 11, 1870 (Senate Journal, second session Forty-first Congress, pages 585 and 634):

"*Resolved*, That the Secretary of the Senate be directed to pay, out of the contingent fund of the Senate, to O. B. Hart, claimant of a seat in the Senate from the State of Florida, the usual mileage of a Senator, and monthly pay from the date of presenting his credentials until the passage of the resolution declaring him not entitled to a seat."

H. P. Farrow and R. H. Whitely, contesting respectively with J. Hill and H. V. M. Miller, from Georgia, were paid from the 16th of February, 1870, to the 30th of January, 1871, under the following resolution, passed February 25, 1871 (Senate Journal, third session Forty-first Congress, page 369):

"*Resolved*, That the Secretary of the Senate be directed to pay to H. P. Farrow and R. H. Whitely, contestants from the State of Georgia, compensation from the 16th day of February, 1870, the date of their election by the reorganized legislature of Georgia, to the 30th day of January, 1871, when the Senate decided they were not entitled to seats."

Foster Blodgett, claiming a seat from the State of Georgia, was paid from March 4, 1871, to December 19, 1871, in pursuance of the following resolution, passed January 9, 1872 (Senate Journal, second session Forty-second Congress, page 94):

"*Resolved*, That the Secretary of the Senate be directed to pay, out of the pay and mileage account, to Foster Blodgett, claiming a seat as Senator-elect from the State of Georgia, the pay and mileage of a Senator from March 4, 1871, to December 19, 1871, when the question of his right to his seat was determined by the Senate."

Again, J. C. Abbott, of North Carolina, contesting the seat of Senator Ransom, was paid from March 4, 1871, to the 23d of April, 1872, under the following resolution:

"*Resolved*, That Joseph C. Abbott, late contestant for a seat in this body from the State of North Carolina, be allowed his salary from 4th of March, 1871, to the 23d of April, 1872, and one mileage each way."

This resolution was passed April 24, 1872. (See Senate Journal, second session Forty-second Congress, page 595.)

Numerous other citations might be adduced; these will suffice, however, to establish the uniform rule of the Senate.

This committee, on the 8th of March, 1876, in reporting back Senate resolution No. 10, to pay Francis W. Sykes, of Georgia, contesting with Senator Spencer, the compensation and mileage of a Senator from the 4th day of March, 1873, to the 28th day of May, 1874, when said contest was decided, submitted (by Mr. Cooper) the following report:

"The rule established by the Senate in cases similar to the present one has been uniform. A person applying for a seat in this body by reason of an election by the legislature of a State, although his application has been refused and another adjudged entitled to the seat, has been paid the amount he would have been entitled to receive if he had been admitted and served the time the contest was pending. The action of the Senate upon such cases has been with such great unanimity as to call for little or no debate. The reasons therefor upon which the rule is based can only be surmised. It may be said the person claims his seat in pursuance of an implied duty imposed upon him to thus assert the right of his State to be represented in this body, which duty he owes to the public, and the expenses incurred in the performance of a public duty should be paid out of the common treasury.

"A proper respect for the action of a State in the choice of a Senator may also justify the rule.

"The committee see nothing in the present case to take it out of the general rule; and therefore recommend the passage of the resolution."

The case of Pinchback is (considering the final action of the Senate in the contests of the two cases) parallel with that of Sykes in this, that each claimed under an election by a body adjudged by the Senate afterward not to have been the legislature of the State. The case of Pinchback, however, is much the stronger from the fact that the alleged legislature from which Mr. Sykes claimed his election was never recognized as the legislature of the State of Alabama by any of the departments of Government, while the Kellogg legislature of Louisiana, by which Mr. Pinchback was elected, was recognized as the legislature of that State not only by the State courts but by the Executive of the nation, and also by the national House of Representatives, by admitting to its membership persons claiming seats under certificates from Governor Kellogg; and inferentially by the Senate, in the adoption of a resolution recognizing Kellogg as the governor of the State. In view of these judicial, executive, and legislative recognitions of the Kellogg legislature, and of the fact that the Senate, after three years of discussion and consideration, was so evenly divided on the ultimate question as to Mr. Pinchback's right to a seat, it would seem difficult to imagine a stronger case of reasonable cause than that moving Mr Pinchback to make claim to a seat, and to persevere as he did in that claim for over three years.

Your committee, therefore, in view of the precedents and the facts of this case, report the following resolution and recommend its adoption:

Resolved, That P. B. S. Pinchback, late contestant for a seat in the Senate from the State of Louisiana, be allowed an amount equal to the compensation and mileage of a Senator from the beginning of the term for which he was a contestant up to the period of the determination of the contest by the Senate.

SATURDAY, *July* 1, 1876.

The Senate proceeded to the consideration of the resolution to pay P. B. S. Pinchback, late a contestant for a seat in the Senate from the State of Louisiana; and,

On motion by Mr. Sargent, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 4319–4323 of the Congressional Record, vol. iv, part 5.]

MONDAY, *July* 3, 1876.

The Senate resumed, &c.

[The debate is found on pages 4368–4372 of the Congressional Record, vol. iv, part 5.]

WEDNESDAY, *July* 5, 1876.

On motion by Mr. Morton, the Senate resumed the consideration of the resolution to pay P. B. S. Pinchback, late a contestant for a seat in the Senate from the State of Louisiana; and,

On motion by Mr. Merrimon to amend the resolution by striking out all after the word "resolved," and in lieu thereof inserting the following:

"That the sum of $5,000 be allowed to P. B. S. Pinchback to pay the reasonable expenses incurred by him as contestant for a seat in the Senate as a Senator from the State of Louisiana,"

After debate,

It was determined in the negative—yeas 10, nays 31.

On motion by Mr. Merrimon, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Cockrell, Davis, Jones of Florida, Kelly, McCreery, McDonald, Merrimon, Norwood, Saulsbury, and Withers.

Those who voted in the negative are Messrs. Alcorn, Allison, Anthony, Bruce, Cameron of Wisconsin, Conkling, Cragin, Dawes, Dennis, Dorsey, Edmunds, Ferry, Frelinghuysen, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Logan, McMillan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Paddock, Sherman, Spencer, Wadleigh, West, Windom, and Wright.

So the amendment was not agreed to.

On motion by Mr. Edmunds to amend the resolution by inserting at the end thereof the words:

"*Resolved*, That in cases of disputed claims to seats in the Senate hereafter arising, no other or greater allowance shall be made to a defeated claimant than in such case shall seem to the Senate just;

"*Resolved*, That in no case shall any pay be allowed to a Senator to begin earlier than the date of his election or appointment,"

It was determined in the affirmative.

On motion by Mr. Spencer to amend the resolution by striking out all after the word "Louisiana," as reported by the committee, and inserting: "and Francis W. Sykes, late a contestant for a seat in the Senate as a Senator from the State of Alabama, be each allowed an amount equal to the pay and mileage of a Senator from the beginning of the term for which they were respectively contestants up to the period of the determination of the respective contests by the Senate," it was determined in the affirmative.

On motion by Mr. Mitchell to amend the resolution by inserting at the end of the first clause, "and the amount required by this resolution to be paid out of the contingent fund of the Senate," it was determined in the affirmative.

On the question to agree to the resolution as amended, as follows:

"*Resolved*, That P. B. S. Pinchback, late contestant for a seat in the Senate from the State of Louisiana, and Francis W. Sykes, late a contestant for a seat in the Senate as a Senator from the State of Alabama, be each allowed an amount equal to the pay and mileage of a Senator from the beginning of the term for which they were respectively contestants up to the period of the determination of the respective contests by the Senate; and the amount required by this resolution to be paid out of the contingent fund of the Senate;

"*Resolved*, That in cases of disputed claims to seats in the Senate hereafter arising no

SATURDAY, *March* 13, 1875.

The Senate resumed, &c.; and,

On motion by Mr. Edmunds to amend the resolution by inserting the word "not" before the word "admitted,"

Pending debate,

On motion by Mr. Conkling, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 41–53 of the Congressional Record, vol. iv, part 1.]

MONDAY, *March* 15, 1875.

The Senate resumed, &c.; and

The question being on the amendment proposed by Mr. Edmunds, viz, insert the word "not" before the word "admitted,"

Pending debate,

On motion by Mr. Morton, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 55–62 of the Congressional Record, vol. iv, part 1.]

TUESDAY, *March* 16, 1875.

The Senate resumed the consideration of the resolution to admit P. B. S. Pinchback to a seat in the Senate as a Senator from the State of Louisiana; and,

After debate,

On motion by Mr. West that the further consideration thereof be postponed to the second Monday in December next, it was determined in the affirmative—yeas 33, nays 30.

On motion by Mr. West, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Alcorn, Allison, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Clayton, Conover, Cragin, Dawes, Dorsey, Ferry of Michigan, Frelinghuysen, Hamilton, Hamlin, Harvey, Howe, Ingalls, Jones of Nevada, McMillan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Paddock, Patterson, Sargent, Sherman, Spencer, West, and Windom.

Those who voted in the negative are Messrs. Bayard, Bogy, Booth, Caperton, Christiancy, Cockrell, Cooper, Davis, Eaton, Goldthwaite, Gordon, Hitchcock, Johnson of Tennessee, Johnston of Virginia, Jones of Florida, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Thurman, Wallace, Whyte, and Withers.

So the motion was agreed to.

[The debate is found on pages 62–91 of the Congressional Record, vol. iv, part 1.]

[First session of the Forty-fourth Congress.]

THURSDAY, *December* 9, 1875.

Mr. West presented a letter* of W. L. McMillen, asking permission to withdraw from the files of the Senate his credentials as Senator-elect from the State of Louisiana, and submitted the following order:

Ordered, That the request of W. L. McMillen, heretofore claiming a seat in the Senate from the State of Louisiana, for the return of his credentials be granted.

TUESDAY, *December* 14, 1875.

Ordered, That the request of William L. McMillen, heretofore claiming a seat in the Senate from the State of Louisiana, for the return of his credentials be granted.

After debate,

On the question to agree thereto, it was determined in the affirmative—yeas 30, nays 28.

On motion by Mr. Howe, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Boutwell, Bruce, Burnside, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Conover, Cragin, Edmunds, Ferry, Frelinghuysen, Hamlin, Harvey, Hitchcock, Howe, Ingalls, McMillan, Morrill of Vermont, Morton, Paddock, Patterson, Robertson, Sargent, Sherman, Spencer, West, Windom, and Wright.

Those who voted in the negative are Messrs. Bayard, Bogy, Caperton, Cockrell, Cooper, Davis, Dawes, Eaton, English, Goldthwaite, Gordon, Johnston, Jones of Florida, Kelly,

* A copy of the letter is found on page 190 of the Congressional Record, vol. iv, part 1.

Kernan, Key, McCreery, McDonald, Merrimon, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Thurman, Wallace, Whyte, and Withers.

So it was

Ordered, That the request of Mr. McMillen be granted, and that his credentials be returned to him by the Secretary.

[The debate is found on pages 200-204 of the Congressional Record, vol. iv, part 1.]

CREDENTIALS OF MR. MARR.

MONDAY, *December* 20, 1875.

Mr. Bayard presented a paper signed by John McEnery as governor of Louisiana and purporting to be the credentials of Robert H. Marr, appointed a Senator to fill the vacancy occasioned by the resignation of William L. McMillen.

Ordered, That it lie on the table.

CREDENTIALS OF MR. EUSTIS.

TUESDAY, *January* 18, 1876.

Mr. Thurman presented papers purporting to be the credentials of J. B. Eustis as a Senator from the State of Louisiana for the term ending March 3, 1879.

Ordered, That they lie on the table.

[The debate and a copy of the credentials are found on pages 451-455 of the Congressional Record, vol. iv, part 1.]

MONDAY, *January* 24, 1876.

On motion by Mr. Morton,

Ordered, That the papers purporting to be the credentials of J. B. Eustis as a Senator from the State of Louisiana be referred to the Committee on Privileges and Elections.

WEDNESDAY, *January* 26, 1876.

Mr. West presented a memorial* of certain State senators of Louisiana in relation to the election of Hon. James B. Eustis as United States Senator from that State; which was referred to the Committee on Privileges and Elections, and ordered to be printed.

FRIDAY, *January* 28, 1876.

Mr. Morton, from the Committee on Privileges and Elections, to whom were referred papers purporting to be credentials of J. B. Eustis, claiming a seat in the Senate as a Senator from the State of Louisiana, submitted the following report:

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Morton (chairman), Logan, Mitchell, Wadleigh, Cameron of Wisconsin, McMillan, Saulsbury, Merrimon, and Cooper.]

The Committee on Privileges and Elections, to whom were referred the papers relating to the election of J. B. Eustis to a seat in this body by the legislature of the State of Louisiana, beg leave to report:

That in their opinion there is no vacancy in the office of Senator from the State of Louisiana, P. B. S. Pinchback having been elected in January, 1873, to the term beginning on the 4th of March, 1873. They therefore recommend that the papers relating to Mr. Eustis be laid upon the table.

THURSDAY, *February* 3, 1876.

On motion by Mr. Morton, the Senate proceeded to consider the resolution submitted by him March 5, 1875, for the admission of P. B. S. Pinchback to a seat in the Senate as a Senator from the State of Louisiana; and,

On motion by Mr. Edmunds, the Senate proceeded to the consideration of executive business.

FRIDAY, *February* 4, 1876.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Edmunds, viz, before the word "admitted," in the said resolution, insert the word "not,"

Pending debate,

On motion by Mr. Cameron, of Pennsylvania, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 886-889 of the Congressional Record, vol. iv, part 1.]

*Found in Senate Miscellaneous, 44th Cong., 1st sess., No. 41.

MONDAY, *February* 7, 1876.

The Senate resumed, &c.

[The debate is found on pages 907–913 of the Congressional Record, vol. iv, part 1.]

TUESDAY, *February* 8, 1876.

The Senate resumed, &c.

[No debate took place.]

MONDAY, *February* 14, 1876.

The Senate resumed, &c.

[The Congressional Record states (page 1065, vol. iv, part 2) that Mr. Morton's speech made this day would be printed in the Appendix, but it does not appear there.]

WEDNESDAY, *March* 1, 1876.

The Senate resumed, &c.

[The debate is found on pages 1382–1392 of the Congressional Record, vol. iv, part 2.]

THURSDAY, *March* 2, 1876.

The Senate resumed, &c.

[No debate took place.]

FRIDAY, *March* 3, 1876.

The Senate resumed, &c.

[The debate is found on pages 1436–1444 of the Congressional Record, vol. iv, part 2.]

MONDAY, *March* 6, 1876.

The Senate resumed, &c.

[No debate took place.]

TUESDAY, *March* 7, 1876.

The Senate resumed, &c.

[The debate is found on pages 1511–1516 of the Congressional Record, vol. iv, part 2.]

WEDNESDAY, *March* 8, 1876.

The Senate resumed the consideration of the resolution to admit P. B. S. Pinchback to a seat in the Senate as a Senator from the State of Louisiana; and,

The question being on the amendment proposed by Mr. Edmunds, viz, before the word "admitted" in the said resolution insert the word "not,"

After debate, it was determined in the affirmative—yeas 32, nays 29.

On motion by Mr. Edmunds, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Caperton, Christiancy, Cockrell, Cooper, Davis, Dennis, Eaton, Edmunds, English, Gordon, Johnston, Jones of Florida, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Morrill of Maine, Morrill of Vermont, Norwood, Paddock, Randolph, Ransom, Saulsbury, Stevenson, Thurman, Wallace, Whyte, and Withers.

Those who voted in the negative are Messrs Allison, Anthony, Boutwell, Bruce, Cameron of Pennsylvania, Conkling, Conover, Cragin, Dorsey, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morton, Patterson, Sargent, Sharon, Sherman, Spencer, West, and Windom.

So the amendment was agreed to.

On the question to agree to the resolution as amended, it was determined in the affirmative—yeas 32, nays 29.

On motion by Mr. Morton, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Caperton, Christiancy, Cockrell, Cooper, Davis, Dennis, Eaton, Edmunds, English, Gordon, Johnston, Jones of Florida, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Morrill of Maine, Morrill of Vermont, Norwood, Paddock, Randolph, Ransom, Saulsbury, Stevenson, Thurman, Wallace, Whyte, and Withers.

Those who voted in the negative are Messrs. Allison, Anthony, Boutwell, Bruce, Cameron of Pennsylvania, Conkling, Conover, Cragin, Dorsey, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morton, Patterson, Sargent, Sharon, Sherman, Spencer, West, and Windom.

So it was

Resolved, That P. B. S. Pinchback be not admitted as a Senator from the State of Louisiana for the term of six years beginning on the 4th of March, 1873.

[The debate is found on pages 1545–1558 of the Congressional Record, vol. iv, part 2.]

[Special session of Senate, March, 1877.]

THURSDAY, *March* 8, 1877.

Mr. Thurman submitted the following resolution for consideration:

"*Resolved*, That the credentials of J. B. Eustis, claiming to be a Senator from the State of Louisiana, be taken from the files and referred to the Committee on Privileges and Elections when that committee shall be appointed."

FRIDAY, *March* 9, 1877.

On motion by Mr. Thurman, the Senate proceeded to consider the resolution yesterday submitted by him for the reference of the credentials of J. B. Eustis to the Committee on Privileges and Elections; and

The resolution was agreed to, as follows:

"*Resolved*, That the credentials of J. B. Eustis, claiming to be a Senator from the State of Louisiana, be taken from the files and referred to the Committee on Privileges and Elections."

[First session of the Forty-fifth Congress.]

THURSDAY, *October* 18, 1877.

Mr. Thurman submitted a motion that Mr. J. B. Eustis be now sworn as a Senator from the State of Louisiana for the term expiring March 3, 1879.

Mr. Conkling objected to the consideration of the motion, and raised the question of order, viz, that the credentials of Mr. Eustis having been referred to the Committee on Privileges and Elections at the last special session of the Senate and not having been reported upon, were not before the Senate, but still in possession of the committee under the fifty-ninth rule, which prescribes that all subjects referred to committees and not reported upon at the close of a session of Congress shall be returned to the office of the Secretary, to be by him retained until the next session, when they shall be returned to the several committees.

The Vice-President submitted the question of order to the Senate in the following words:

"Shall all subjects referred to committees and not reported upon at the close of the last preceding session of this body, in March last, and returned to the office of the Secretary of the Senate, be referred to the several committees to which they had previously been referred?"

And it was determined in the affirmative.

On motion by Mr. Thurman that the Committee on Privileges and Elections be discharged from the further consideration of the credentials of J. B. Eustis,

Mr. Edmunds objected to the consideration of the motion this day.

When,

On motion by Mr. Thurman (at 3 o'clock and 16 minutes p. m.), the Senate adjourned.

[The debate is found on pages 107, 108 of the Congressional Record, vol. vi.]

FRIDAY, *October* 19, 1877.

The Senate proceeded to consider the motion yesterday submitted by Mr. Thurman to discharge the Committee on Privileges and Elections from the further consideration of the credentials of J. B. Eustis; and,

After debate,

On motion by Mr. Thurman,

Ordered, That the motion lie on the table.

[The debate is found on pages 109–115 of the Congressional Record, vol. vi.]

SATURDAY, *December* 1, 1877.

Mr. Wadleigh, from the Committee on Privileges and Elections, to whom were referred papers purporting to be credentials of James B. Eustis, claiming a seat as a Senator from the State of Louisiana, reported the following resolution:

"*Resolved*, That James B. Eustis is lawfully entitled to a seat in the Senate of the United States from the State of Louisiana, from the 12th day of January, 1876, for the term ending March 3, 1879; and that he be admitted thereto upon taking the proper oath."

Mr. Ingalls asked and obtained leave of the Senate to submit the views* of a minority of the Committee on Privileges and Elections on the papers purporting to be credentials

*Never submitted.

of James B. Eustis, claiming a seat in the Senate as a Senator from the State of Louisiana.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Wadleigh (chairman), Mitchell, Cameron of Wisconsin, McMillan, Hoar, Ingalls, Saulsbury, Merrimon, and Hill.]

IN THE SENATE OF THE UNITED STATES.

DECEMBER 1, 1877.—Ordered to be printed.

Mr. Wadleigh, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom were referred the credentials of James B. Eustis for a seat in the Senate of the United States from the State of Louisiana for the term of six years commencing March 4, 1873, ask leave to submit the following report:

Mr. Eustis claims to have been elected on the 12th of January, 1876. The body which elected him was that formed by what is known as the Wheeler compromise; and there is no doubt that it was the lawful legislature of Louisiana.

Two questions arise in this case: First, whether Mr. Eustis was lawfully elected; second, whether at the time of his election a vacancy existed which the legislature of Louisiana had the right to fill.

The legislature of Louisiana on the 12th day of January, 1876, consisted of a house containing one hundred and eleven members and a senate with thirty-six senators. On the 11th day of January, 1876, the house voted to go into an election for United States Senator, and the senate on the same day refused to do so. On the 12th day of January, it appearing that there had been no election on the day before, sixty-four members of the house and twelve members of the senate, being a majority of all entitled to seats in both houses, met in joint convention and elected Mr. Eustis.

Your committee find that although the senate refused to take part as such in said election, and although a minority of the senate only did take part in it, yet there was a substantial compliance with the act of Congress of 1866. Upon the constitutionality of that act your committee express no opinion. The Senate has repeatedly, however, by its action affirmed its constitutionality; and your committee feel bound by the precedents which the Senate has established.

The second question, whether or not a vacancy existed at the time of Mr. Eustis's election which the legislature of Louisiana had the right to fill, is one of some difficulty. At the time of said election Mr. P. B. S. Pinchback was the claimant for the same seat under two elections—one in 1873, the other in 1875. His credentials and claims under said elections had been presented to the Senate and by it referred to the Committee on Privileges and Elections. Said committee, on the 5th day of March, 1875, reported a resolution to the Senate that Mr. Pinchback be admitted thereto. On the 8th day of March, 1876, that resolution was amended so as to change it to a resolution that he be not admitted. The resolution was passed as thus amended on the same day.

Your committee feel bound to regard that vote of the Senate as a final adjudication of the claims of Mr. Pinchback and a decision that he had no right to a seat. Mr. Eustis's election took place while Mr. Pinchback's case was pending in the Senate, and it may be contended with much force that until the final adjudication by the Senate of Mr Pinchback's claims there was no vacancy which the legislature was authorized to fill.

This question arose at the first session of the Twenty-third Congress, in the case of Potter *vs.* Robbins, where a majority of the special committee of the Senate held that the legislature of Rhode Island had no authority to proceed to the election of another Senator until the seat of the Senator-elect had been vacated by a solemn decision of the Senate of the United States. Silas Wright, of New York, made a report in behalf of the minority of said committee, in which it was contended that if the election of Mr. Robbins was not made by the lawful legislature of the State it was absolutely void, and that therefore Mr. Potter's election while Mr. Robbins's claim to a seat in the Senate was still pending was valid.

Your committee do not question the soundness of the rule laid down in that case, but are not disposed to apply it to this case, where the circumstances are very different. In the case of Potter *vs.* Robbins, Mr. Robbins had been admitted to the Senate, the committee had before it both his credentials and those of Mr. Potter; but here there is no contest. The Senate never admitted Mr. Pinchback to his seat, but decided that he had no right thereto.

This seat has long been vacant. Mr. Eustis is the only person who appears to claim it. The lawful character of the legislature which elected him is admitted. His election

was substantially in compliance with the law of Congress. No one appears to contest his right to a seat. Under these circumstances your committee believe that Mr. Eustis should be admitted to the Senate, and report a resolution to that effect and recommend its passage.

[Second session of the Forty-fifth Congress.]

MONDAY, *December* 10, 1877.

On motion by Mr. Wadleigh, the Senate proceeded to consider the resolution reported by the Committee on Privileges and Elections declaring James B. Eustis entitled to a seat in the Senate as a Senator from the State of Louisiana; and,

After debate,

On the question to agree to the resolution, as follows:

"*Resolved*, That James B. Eustis is lawfully entitled to a seat in the Senate of the United States from the State of Louisiana, from the 12th day of January, 1876, for the term ending March 3, 1879, and that he be admitted thereto upon taking the proper oath,"

It was determined in the affirmative—yeas 49, nays 8.

On motion by Mr. Ingalls, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Bailey, Barnum, Bayard, Beck, Booth, Bruce, Burnside, Chaffee, Christiancy, Cockrell, Coke, Davis of West Virginia, Dawes, Dorsey, Eaton, Ferry, Garland, Gordon, Harris, Hereford, Hill, Johnston, Jones of Florida, Jones of Nevada, Kernan, Kirkwood, Lamar, McCreery, McDonald, McPherson, Matthews, Maxey, Merrimon, Mitchell, Morgan, Oglesby, Paddock, Patterson, Plumb, Randolph, Ransom, Saulsbury, Teller, Thurman, Voorhees, Wadleigh, Wallace, and Withers.

Those who voted in the negative are Messrs. Allison, Cameron of Wisconsin, Hamlin, Howe, Ingalls, McMillan, Morrill, and Saunders.

So the resolution was agreed to.

Mr. Eustis then appeared, and the oaths prescribed by law having been administered to him by the Vice-President, he took his seat in the Senate.

[The debate is found on pages 82-87 of the Congressional Record, vol. vii, part 1.]

COMPENSATION OF MR. PINCHBACK.

MONDAY, *April* 17, 1876.

Mr. Mitchell, from the Committee on Privileges and Elections, submitted a report (No. 274), accompanied by the following resolution. [Resolution found at end of report.]

REPORT OF COMMITTEE.

IN THE SENATE OF THE UNITED STATES.

APRIL 17, 1876.—Ordered to be printed.

Mr. Mitchell, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, having under consideration the question of the allowance proper to be made to P. B. S. Pinchback, late a contestant for a seat in the Senate from the State of Louisiana, submit the following report:

The great length of time that elapsed between the beginning of the term for which Mr. Pinchback was a contestant and the date of the final determination of that contest by the Senate, as also the remarkably close vote by which such contest was decided, have impressed your committee with the belief that the full measure of compensation which the uniform action of the Senate heretofore has given to contestants should be allowed in this case.

Your committee are advised by the journals of the Senate that the rule established by this body in similar cases is the payment to the contestant of the amount he would have been entitled to receive in case he had been admitted and served the time the contest was pending; in other words, an amount equal to the compensation and mileage of a Senator for the time covered by the contest.

A few citations will suffice to show the uniformity of this rule.

O. B. Hart, contesting the seat of A. Gilbert, of Florida, was paid from the contingent fund from the 1st to 28th of April, 1870, under the following resolution, passed May 11, 1870 (Senate Journal, second session Forty-first Congress, pages 585 and 634):

"*Resolved*, That the Secretary of the Senate be directed to pay, out of the contingent fund of the Senate, to O. B. Hart, claimant of a seat in the Senate from the State of Florida, the usual mileage of a Senator, and monthly pay from the date of presenting his credentials until the passage of the resolution declaring him not entitled to a seat."

H. P. Farrow and R. H. Whitely, contesting respectively with J. Hill and H. V. M. Miller, from Georgia, were paid from the 16th of February, 1870, to the 30th of January, 1871, under the following resolution, passed February 25, 1871 (Senate Journal, third session Forty-first Congress, page 369):

"*Resolved*, That the Secretary of the Senate be directed to pay to H. P. Farrow and R. H. Whitely, contestants from the State of Georgia, compensation from the 16th day of February, 1870, the date of their election by the reorganized legislature of Georgia, to the 30th day of January, 1871, when the Senate decided they were not entitled to seats."

Foster Blodgett, claiming a seat from the State of Georgia, was paid from March 4, 1871, to December 19, 1871, in pursuance of the following resolution, passed January 9, 1872 (Senate Journal, second session Forty-second Congress, page 94):

"*Resolved*, That the Secretary of the Senate be directed to pay, out of the pay and mileage account, to Foster Blodgett, claiming a seat as Senator-elect from the State of Georgia, the pay and mileage of a Senator from March 4, 1871, to December 19, 1871, when the question of his right to his seat was determined by the Senate."

Again, J. C. Abbott, of North Carolina, contesting the seat of Senator Ransom, was paid from March 4, 1871, to the 23d of April, 1872, under the following resolution:

"*Resolved*, That Joseph C. Abbott, late contestant for a seat in this body from the State of North Carolina, be allowed his salary from 4th of March, 1871, to the 23d of April, 1872, and one mileage each way."

This resolution was passed April 24, 1872. (See Senate Journal, second session Forty-second Congress, page 595.)

Numerous other citations might be adduced; these will suffice, however, to establish the uniform rule of the Senate.

This committee, on the 8th of March, 1876, in reporting back Senate resolution No. 10, to pay Francis W. Sykes, of Georgia, contesting with Senator Spencer, the compensation and mileage of a Senator from the 4th day of March, 1873, to the 28th day of May, 1874, when said contest was decided, submitted (by Mr. Cooper) the following report:

"The rule established by the Senate in cases similar to the present one has been uniform. A person applying for a seat in this body by reason of an election by the legislature of a State, although his application has been refused and another adjudged entitled to the seat, has been paid the amount he would have been entitled to receive if he had been admitted and served the time the contest was pending. The action of the Senate upon such cases has been with such great unanimity as to call for little or no debate. The reasons therefor upon which the rule is based can only be surmised. It may be said the person claims his seat in pursuance of an implied duty imposed upon him to thus assert the right of his State to be represented in this body, which duty he owes to the public, and the expenses incurred in the performance of a public duty should be paid out of the common treasury.

"A proper respect for the action of a State in the choice of a Senator may also justify the rule.

"The committee see nothing in the present case to take it out of the general rule; and therefore recommend the passage of the resolution."

The case of Pinchback is (considering the final action of the Senate in the contests of the two cases) parallel with that of Sykes in this, that each claimed under an election by a body adjudged by the Senate afterward not to have been the legislature of the State. The case of Pinchback, however, is much the stronger from the fact that the alleged legislature from which Mr. Sykes claimed his election was never recognized as the legislature of the State of Alabama by any of the departments of Government, while the Kellogg legislature of Louisiana, by which Mr. Pinchback was elected, was recognized as the legislature of that State not only by the State courts but by the Executive of the nation, and also by the national House of Representatives, by admitting to its membership persons claiming seats under certificates from Governor Kellogg; and inferentially by the Senate, in the adoption of a resolution recognizing Kellogg as the governor of the State. In view of these judicial, executive, and legislative recognitions of the Kellogg legislature, and of the fact that the Senate, after three years of discussion and consideration, was so evenly divided on the ultimate question as to Mr. Pinchback's right to a seat, it would seem difficult to imagine a stronger case of reasonable cause than that moving Mr Pinchback to make claim to a seat, and to persevere as he did in that claim for over three years.

Your committee, therefore, in view of the precedents and the facts of this case, report the following resolution and recommend its adoption:

Resolved, That P. B. S. Pinchback, late contestant for a seat in the Senate from the State of Louisiana, be allowed an amount equal to the compensation and mileage of a Senator from the beginning of the term for which he was a contestant up to the period of the determination of the contest by the Senate.

SATURDAY, *July* 1, 1876.

The Senate proceeded to the consideration of the resolution to pay P. B. S. Pinchback, late a contestant for a seat in the Senate from the State of Louisiana; and,

On motion by Mr. Sargent, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 4319–4323 of the Congressional Record, vol. iv, part 5.]

MONDAY, *July* 3, 1876.

The Senate resumed, &c.

[The debate is found on pages 4368–4372 of the Congressional Record, vol. iv, part 5.]

WEDNESDAY, *July* 5, 1876.

On motion by Mr. Morton, the Senate resumed the consideration of the resolution to pay P. B. S. Pinchback, late a contestant for a seat in the Senate from the State of Louisiana; and,

On motion by Mr. Merrimon to amend the resolution by striking out all after the word "resolved," and in lieu thereof inserting the following:

"That the sum of $5,000 be allowed to P. B. S. Pinchback to pay the reasonable expenses incurred by him as contestant for a seat in the Senate as a Senator from the State of Louisiana,"

After debate,

It was determined in the negative—yeas 10, nays 31.

On motion by Mr. Merrimon, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Cockrell, Davis, Jones of Florida, Kelly, McCreery, McDonald, Merrimon, Norwood, Saulsbury, and Withers.

Those who voted in the negative are Messrs. Alcorn, Allison, Anthony, Bruce, Cameron of Wisconsin, Conkling, Cragin, Dawes, Dennis, Dorsey, Edmunds, Ferry, Frelinghuysen, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Logan, McMillan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Paddock, Sherman, Spencer, Wadleigh, West, Windom, and Wright.

So the amendment was not agreed to.

On motion by Mr. Edmunds to amend the resolution by inserting at the end thereof the words:

"*Resolved*, That in cases of disputed claims to seats in the Senate hereafter arising, no other or greater allowance shall be made to a defeated claimant than in such case shall seem to the Senate just;

"*Resolved*, That in no case shall any pay be allowed to a Senator to begin earlier than the date of his election or appointment,"

It was determined in the affirmative.

On motion by Mr. Spencer to amend the resolution by striking out all after the word "Louisiana," as reported by the committee, and inserting: "and Francis W. Sykes, late a contestant for a seat in the Senate as a Senator from the State of Alabama, be each allowed an amount equal to the pay and mileage of a Senator from the beginning of the term for which they were respectively contestants up to the period of the determination of the respective contests by the Senate," it was determined in the affirmative.

On motion by Mr. Mitchell to amend the resolution by inserting at the end of the first clause, "and the amount required by this resolution to be paid out of the contingent fund of the Senate," it was determined in the affirmative.

On the question to agree to the resolution as amended, as follows:

"*Resolved*, That P. B. S. Pinchback, late contestant for a seat in the Senate from the State of Louisiana, and Francis W. Sykes, late a contestant for a seat in the Senate as a Senator from the State of Alabama, be each allowed an amount equal to the pay and mileage of a Senator from the beginning of the term for which they were respectively contestants up to the period of the determination of the respective contests by the Senate; and the amount required by this resolution to be paid out of the contingent fund of the Senate;

"*Resolved*, That in cases of disputed claims to seats in the Senate hereafter arising no

other or greater allowance shall be made to a defeated claimant than in such case shall seem to the Senate just;

"*Resolved*, That in no case shall any pay be allowed to a Senator to begin earlier than the date of his election or appointment,"

It was determined in the affirmative—yeas 27, nays 11.

On motion by Mr. Mitchell, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Alcorn, Allison, Anthony, Bruce, Cameron of Wisconsin, Conkling, Cragin, Dawes, Ferry, Frelinghuysen, Harvey, Hitchcock, Howe, Logan, McMillan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Paddock, Sargent, Sherman, Spencer, Wadleigh, West, Windom, and Wright.

Those who voted in the negative are Messrs. Cockrell, Davis, Gordon, Kelly, Key, McCreery, McDonald, Merrimon, Norwood, Saulsbury, and Withers.

So the resolution was agreed to.

[The debate is found on pages 4382–4400 of the Congressional Record, vol. iv, part 5.]

SPOFFORD vs. KELLOGG (MANNING).

Contest for seat for term beginning March 4, 1877.

SATURDAY, *January* 20, 1877.

Mr. Morton presented the credentials of William Pitt Kellogg, elected a Senator by the general assembly of the State of Louisiana for the term of six years commencing March 4, 1877.

The credentials were read.

[Special session of Senate, March, 1877.]

MONDAY, *March* 5, 1877.

Mr. William Pitt Kellogg, whose credentials were heretofore presented as a Senator from the State of Louisiana, having appeared to take the oaths of office,

Mr. Bogy objected to the oaths of office being administered to Mr. Kellogg;

Whereupon

Mr. Anthony submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the credentials of Senators-elect in all disputed or contested cases lie upon the table until to-morrow."

[The debate is found on pages 1, 2 of the Congressional Record, vol. vi.]

TUESDAY, *March* 6, 1877.

Mr. Blaine submitted the following resolution for consideration:

"*Resolved*, That the oaths prescribed by law be now administered by the Vice President to William Pitt Kellogg, whose credentials as a Senator from the State of Louisiana were presented on the 20th of January, 1877."

On motion by Mr. Bayard to amend the resolution by striking out all after the word "resolved," and in lieu thereof inserting "the credentials of William Pitt Kellogg, claiming to be a Senator from the State of Louisiana, do now lie upon the table until the appointment of a Committee on Privileges and Elections, to whom they can be referred,"

Pending debate,

On motion by Mr. Thurman (at 3 o'clock and 15 minutes p. m.), the Senate adjourned.

[The debate is found on pages 15, 16 of the Congressional Record, vol. vi.]

WEDNESDAY, *March* 7, 1877.

The Senate resumed the consideration of the resolution of Mr. Blaine; and

Mr. Bayard having modified his said amendment, on the question to agree thereto, as follows, viz: Strike out all after the word "resolved," and in lieu thereof insert "the credentials of William Pitt Kellogg, claiming to be a Senator from the State of Louisiana, do now lie upon the table until the appointment of a Committee on Privileges and Elections, to whom they shall be referred,"

After debate,

It was determined in the affirmative—yeas 35, nays 29.

On motion by Mr. Sargent, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bailey, Barnum, Bayard, Bogy, Booth,

Burnside, Christiancy, Coke, Conkling, Davis of Illinois, Davis of West Virginia, Dennis, Eaton, Garland, Gordon, Harris, Hereford, Hill, Johnston, Jones of Florida, Jones of Nevada, Kernan, Lamar, McCreery, McDonald, McPherson, Maxey, Morrill, Randolph, Ransom, Saulsbury, Thurman, Wallace, Whyte, and Withers.

Those who voted in the negative are Messrs. Allison, Anthony, Blaine, Bruce, Cameron of Pennsylvania, Chaffee, Conover, Dawes, Dorsey, Hamlin, Hoar, Howe, Ingalls, Kirkwood, McMillan, Mitchell, Morton, Oglesby, Paddock, Patterson, Plumb, Rollins, Sargent, Saunders, Sharon, Sherman, Teller, Wadleigh, and Windom.

So the amendment was agreed to.

On the question to agree to the resolution as amended, as follows:

"*Resolved*, That the credentials of William Pitt Kellogg, claiming to be a Senator from the State of Louisiana, do now lie upon the table until the appointment of a Committee on Privileges and Elections, to whom they shall be referred,"

It was determined in the affirmative—yeas 42, nays 21.

On motion by Mr. Blaine, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Anthony, Bailey, Bayard, Barnum, Beck, Bogy, Booth, Burnside, Christiancy, Conkling, Conover, Davis of Illinois, Davis of West Virginia, Dawes, Dennis, Dorsey, Eaton, Garland, Gordon, Harris, Hereford, Hill, Hoar, Johnston, Jones of Florida, Jones of Nevada, Kernan, Lamar, McCreery, McDonald, McPherson, Maxey, Morrill, Paddock, Randolph, Ransom, Sargent, Saulsbury, Thurman, Wallace, Whyte, and Withers.

Those who voted in the negative are Messrs. Allison, Blaine, Bruce, Cameron of Pennsylvania, Chaffee, Hamlin, Ingalls, Kirkwood, McMillan, Mitchell, Morton, Oglesby, Patterson, Plumb, Rollins, Saunders, Sharon, Sherman, Teller, Wadleigh, and Windom.

So the resolution was agreed to.

[The debate is found on pages 17-23 of the Congressional Record, vol. vi.]

[First session of the Forty-fifth Congress.]

WEDNESDAY, *October* 17, 1877.

Mr. Thurman presented the credentials of Henry M. Spofford, elected a Senator by the legislature of the State of Louisiana for the term of six years commencing March 4, 1877.

The credentials were read.

Mr. Thurman then submitted the following resolution, and asked for its present consideration:

"*Resolved*, That Henry M. Spofford, whose credentials as a Senator from the State of Louisiana have been this day read, be now sworn and admitted as such Senator."

Mr. Edmunds objected to the consideration of the said resolution this day, and raised the point of order that under the thirty-third rule of the Senate, which requires that all resolutions shall lie over one day for consideration, the resolution could not now be considered.

The Vice-President overruled the point of order raised by Mr. Edmunds, and decided that under the seventh rule of the Senate the presentation of the credentials of a Senator being a question of privilege, all questions and motions arising thereon were in order at this time, and that the consideration of the resolution could now be proceeded with.

On motion of Mr. Mitchell to amend the resolution by striking out all after the word "resolved," and in lieu thereof inserting:

"That the credentials of Henry M. Spofford, claiming to be a Senator from the State of Louisiana, be referred to the Committee on Privileges and Elections,"

After debate,

Ordered, That the further consideration of the said resolution be postponed to tomorrow.

Mr. Edmunds submitted the following resolution for consideration:

"*Resolved*, That the Committee on Privileges and Elections be discharged from the further consideration of the credentials of William Pitt Kellogg as a Senator from the State of Louisiana, now under its consideration."

On motion by Mr. Thurman, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 78-83 of the Congressional Record, vol. vi.]

THURSDAY, *October* 18, 1877.

The Senate proceeded to consider the resolution yesterday submitted by Mr. Thurman,

to admit Henry M. Spofford to a seat in the Senate as a Senator from the State of Louisiana; and

The question being on the amendment proposed by Mr. Mitchell, viz: Strike out all after the word "resolved," and in lieu thereof insert the following:

"That the credentials of Henry M. Spofford, claiming to be a Senator from the State of Louisiana, be referred to the Committee on Privileges and Elections."

After debate,

On the question to agree thereto, it was determined in the affirmative—yeas 36, nays 33.

On motion by Mr. Edmunds, the yeas and days being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Anthony, Blaine, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Conkling, Conover, Dawes, Dorsey, Edmunds, Ferry, Hamlin, Hoar, Howe, Ingalls, Jones of Nevada, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Oglesby, Paddock, Patterson, Plumb, Rollins, Sargent, Saunders, Spencer, Teller, and Wadleigh.

Those who voted in the negative are Messrs. Armstrong, Bailey, Barnum, Bayard, Beck, Cockrell, Coke, Davis of Illinois, Davis of West Virginia, Dennis, Eaton, Garland, Gordon, Grover, Harris, Hereford, Hill, Jones of Florida, Kernan, Lamar, McCreery, McDonald, McPherson, Maxey, Merrimon, Morgan, Randolph, Ransom, Saulsbury, Thurman, Wallace, Whyte, and Withers.

So the amendment was agreed to.

On motion by Mr. Whyte further to amend the resolution by adding thereto the words "and that said committee report thereon on or before the 1st day of November, 1877,"

After debate,

It was determined in the negative—yeas 31, nays 35.

On motion by Mr. Whyte, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bailey, Barnum, Bayard, Beck, Coke, Davis of Illinois, Davis of West Virginia, Dennis, Eaton, Garland, Gordon, Grover, Harris, Hereford, Hill, Jones of Florida, Kernan, Lamar, McCreery, McDonald, McPherson, Maxey, Merrimon, Morgan, Randolph, Ransom, Saulsbury, Thurman, Wallace, Whyte, and Withers.

Those who voted in the negative are Messrs. Allison, Anthony, Blaine, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Conkling, Conover, Dawes, Dorsey, Edmunds, Ferry, Hamlin, Hoar, Howe, Ingalls, Jones of Nevada, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Oglesby, Paddock, Patterson, Rollins, Sargent, Saunders, Spencer, Teller, and Wadleigh.

So the amendment was not agreed to.

On motion by Mr. Conkling to further amend the resolution by adding thereto the following: "and the said committee shall also consider and report upon the credentials of William Pitt Kellogg," it was determined in the affirmative; and

The resolution as amended was then agreed to, as follows:

"*Resolved*, That the credentials of Henry M. Spofford, claiming to be a Senator from the State of Louisiana, be referred to the Committee on Privileges and Elections; and the said committee shall also consider and report upon the credentials of William Pitt Kellogg."

The Senate proceeded to consider the resolution yesterday submitted by Mr. Edmunds to discharge the Committee on Privileges and Elections from the further consideration of the credentials of William Pitt Kellogg; and

Mr. Edmunds withdrew the said resolution.

[The debate is found on pages 99–108 of the Congressional Record, vol. vi.]

THURSDAY, *October* 25, 1877.

Mr. Mitchell submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Committee on Privileges and Elections in the contested cases of William Pitt Kellogg and Henry M. Spofford, claiming seats as Senators from the State of Louisiana, and whose credentials have been referred to such committee, be authorized to send for persons and papers and administer oaths with a view of enabling said committee to determine and report upon the title, respectively, on the merits of each of said contestants to a seat in the Senate."

MONDAY, *November* 26, 1877.

Mr. Wadleigh, from the Committee on Privileges and Elections, to whom were referred the credentials of William Pitt Kellogg and the credentials of Henry M. Spofford,

claiming seats as Senators from the State of Louisiana, submitted a report (No. 16) thereon, accompanied by the following resolution:

"*Resolved*, That William Pitt Kellogg is, upon the merits of the case, lawfully entitled to a seat in the Senate of the United States from the State of Louisiana for the term of six years commencing on the 4th day of March, 1877, and that he be admitted thereto upon taking the proper oath.

"*Resolved*, That Henry M. Spofford is not entitled to a seat in the Senate of the United States."

Mr. Merrimon asked and obtained leave of the Senate to submit the views of a minority of the Committee on Privileges and Elections on the credentials of William Pitt Kellogg and the credentials of Henry M. Spofford; which were ordered to be printed to accompany the report of the committee.

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Wadleigh (chairman), Mitchell, Cameron of Wisconsin, McMillan, Hoar, Ingalls, Saulsbury, Merrimon, and Hill.]

IN THE SENATE OF THE UNITED STATES.

NOVEMBER 26, 1877.—Ordered to be printed.

Mr. Wadleigh, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom were referred the credentials of William Pitt Kellogg and the credentials of Henry M. Spofford, for the same seat in the Senate of the United States, ask leave to submit the following report:

Mr. Kellogg claims to have been elected on the 10th day of January, 1877. Mr. Spofford claims to have been elected on the 24th of April, 1877. In an inquiry into these cases upon their merits, the first question which arises is, whether the body which elected Mr. Kellogg was the lawful legislature of Louisiana at the time of such election.

There was in said State on the 6th of November, 1876, an election for governor, lieutenant-governor, and members of the general assembly. The statements of the votes cast at such election were required by law to be sent to a board of returning officers for all elections in the State. Said returning officers were by law authorized and required to ascertain, return, and certify the election of members of the general assembly. No other tribunal was clothed with that power or duty. They were required to report their decisions to the secretary of state, and it was by law provided that the secretary of state should transmit to the clerk of the house of representatives and secretary of the senate of the last general assembly a list of the names of such persons as, according to the decisions of the returning officers, were elected to either branch of the general assembly.

It was the duty of the said clerk and secretary to place the names of such persons so furnished upon the roll of the house and senate, respectively, and those representatives and senators whose names were so placed by the clerk and secretary, and none others, were competent to organize the house of representatives or senate.

The secretary of state, in obedience to the statute, transmitted to the clerk of the former house and secretary of the senate a list of the names of persons by the said returning officers decided to have been elected to either branch of the general assembly, and from the list thus furnished the clerk and secretary organized each house of the State legislature on the 1st day of January, 1877.

By the constitution of Louisiana the house of representatives is composed of one hundred and twenty members and the senate of thirty-six members. There is no doubt that sixty-one members of the house constitute a quorum of that body, and that nineteen members constitute a quorum of the senate. There were present at the organization, and took part in the proceedings, eight senators holding over, and eleven newly elected—nineteen in all—having the certificates of said returning officers, which was a quorum, and sixty-eight representatives, thus declared to have been elected, being seven over a quorum. After such organization the members of the two houses assembled in joint convention on the 10th day of January, 1877, to elect a Senator of the United States.

Upon reading the journal of each house it was found that no election of Senator had been made the day before. The roll of each house was called, and it was found there were present in the joint convention seventeen senators and sixty-six representatives, they composing a majority of all the members of the general assembly of the State. Nominations were then made for Senator, and a *viva voce* vote was had, and William Pitt Kellogg received the votes of seventeen senators and sixty-six representatives, and was declared by the president of the senate (the presiding officer of the joint convention) to

* Taken from Senate Reports, 1st sess. 45th Cong., No. 16.

have received a majority of all the votes of the general assembly, and to have been duly elected a Senator of the United States for the term of six years beginning on the 4th day of March, 1877.

Your committee find that said election was held strictly in accordance with the act of Congress of 1866 to regulate the times and manner of holding elections for Senator. The credentials of Mr. Kellogg are signed by Stephen B. Packard as governor of the State of Louisiana, and bear date the 11th day of January, 1877.

It appears to your committee that Mr. Packard was on that day the lawful governor of the State of Louisiana. By the constitution of Louisiana the returning officers are required to seal up and transmit the returns of the election of governor and lieutenant-governor to the secretary of state, who shall deliver them to the speaker of the house of representatives on the second day of the session of the general assembly then to be holden.

On the second day of the session the legislature proceeded to count the votes for governor and lieutenant-governor, there being then present twenty-one senators and sixty-eight representatives, two over a quorum of the senate and seven over a quorum of the house. The committee appointed by the two houses to make and canvass the votes for governor and lieutenant-governor reported that Stephen B. Packard was elected governor and C. C. Antoine lieutenant-governor of said State, and that by the following vote:

For governor:	
Stephen B. Packard	74,624
Francis T. Nicholls	71,198
For lieutenant-governor:	
C. C. Antoine	74,669
L. A. Wiltz	71,093

Upon the facts hereinbefore stated your committee are of the opinion—

First, that the returning officers of Louisiana were a lawful tribunal, solely authorized and required to ascertain, return, and certify to the election of members of the general assembly.

Second, that those, and only those, who held certificates of election from said returning officers were entitled to seats in the general assembly at the organization thereof.

Third, that the body which first organized with a quorum of the members in each branch thereof, having such certificates, and which was duly recognized by the lawful governor of said State, was the lawful legislature.

The proof before your committee seems conclusive that at the time the legislature which elected Kellogg was organized there were present a quorum of each house thereof then lawfully entitled to seats therein; that at the time of his election there were present a quorum of the general assembly then lawfully entitled to seats therein; all of whom voted for said Kellogg, and that said legislature was recognized by the lawful governor of said State. It was, however, contended by Mr. Spofford that it was the duty of your committee to go behind the certificates of the returning officers and investigate the elections of individual members of the general assembly. At his request your committee did investigate such elections and find the following facts:

Of the lawful election of fifty-seven members of the house of representatives which aided in electing Mr. Kellogg there is no dispute whatever, and they now sit in the Nicholls house, which took part in the election of Mr. Spofford. Three more of the members of the Packard house, from the parish of Orleans, were until recently admitted on all hands to have had a majority of the votes cast, and your committee find that they were lawfully elected. Besides these sixty members of the house, there were eleven more whose election is disputed by Mr. Spofford upon the ground that they did not receive a majority of the votes cast. Of the twenty-one members of the senate which participated in the election of Mr. Kellogg, there were sixteen whose right to hold their seats is admitted.

The election of three more from the twelfth, eighteenth, and twenty-second senatorial districts is disputed upon the ground that they did not receive a majority of the votes cast. Two more, Baker and Kelso, were not declared elected by the returning board, but were seated by a vote of the senate acting under its constitutional right to judge of the election of its own members.

Complaint is made by Mr. Spofford that one Steven, a lawful senator, was taken against his will into the senate and detained there against his will for the purpose of making a quorum. Your committee believe there is no good reason for such complaint. If the senate had organized with a quorum of members lawfully entitled to seats therein, as was the case, it had the undoubted right to compel the attendance of absent members.

The senators and members whose title to seats is disputed on the ground that they did not receive a majority of the votes cast were those declared elected by the returning

board on account of the rejection of the votes cast at certain polls in the parishes of East Baton Rouge, De Soto, West Feliciana, La Fayette, Morehouse, Ouachita, and Webster, in the twelfth senatorial district, composed of the parishes of East Feliciana, West Feliciana, and Point Coupée; the eighteenth senatorial district, composed of the parishes of Ouachita and Caldwell; and the twenty-second senatorial district, composed of the parishes of Natchitoches, De Soto, Red River, and Sabine.

There were no votes rejected in the parishes of Sabine, Point Coupée, and Red River. A comparatively small number of the votes were rejected on account of the obvious illegalities, informalities, and misconduct of the election officers, and there is little complaint on account of the rejection of such votes. The rest were rejected on account of violence and intimidation which prevented a fair election. The evidence of such intimidation is overwhelming and irrefutable. Many of the Republican leaders were killed, others were tortured, others driven into exile. Companies of armed men paraded the parishes by night, carrying terror wherever they went.

Your committee has no space to recount or refer to a tithe of the horrible outrages perpetrated to prevent the Republicans from exercising the free right of suffrage. They were evidently perpetrated in localities where the result of the election would thereby be most strongly affected, and they had their intended effect. But for these numerous and horrible crimes, your committee believe that the candidates upon the State and National Republican tickets would have been elected beyond dispute, and that the general assembly would have been overwhelmingly Republican.

In forty parishes, where it is admitted on all hands the election was fair and peaceable, the colored registration in 1876 numbered 87,999, the white registration 72,034, showing a colored majority of 15,965. Those forty parishes returned 65,747 Republican votes and 59,392 Democratic votes, a Republican majority of 6,353 votes. In the seventeen terrorized parishes the colored registration was 27,269, the white registration was 20,320, a colored majority of 6,949, almost half as large as the registered colored majority in all the rest of the State. But the vote in those seventeen parishes as cast showed but 10,970 Republicans and 21,123 Democrats. Thus those seventeen parishes, with a colored majority of nearly 7,000 registered, cast a Democratic majority of 10,153. In the ten parishes of East Baton Rouge, Caldwell, De Soto, East Feliciana, West Feliciana, La Fayette, Morehouse, Natchitoches, Ouachita, and Webster, in which (on account of the rejection of polls by the returning board) the eleven disputed members of the house and three disputed members of the senate were declared elected by the returning officers, there were in 1876 19,174 colored voters and 11,212 white voters registered, being a colored majority of 7,962.

In the same parishes there were cast 14,510 Democratic and 8,489 Republican votes, being a Democratic majority of 6,021. In the strong Republican parish of East Feliciana, where leading Republicans had been terrorized into procuring the appointment as sheriff of a Democratic leader, whose career had been that of a brigand, upon his promise of peace and conciliation, only three Republicans dared to vote. There is no evidence to show and it is not pretended that the same arguments and methods of persuasion were not employed by the Democrats in the forty parishes above referred to as were used in the seventeen terrorized parishes; but in the seventeen parishes numerous and frightful crimes were deliberately perpetrated to carry the election; in the others not. The difference in the vote shows too strongly to be affected by argument or clouds of perjured witnesses the perpetration of such outrages and their effect.

It was contended by Mr. Spofford before your committee that the returning officers were guilty of fraud in rejecting the polls hereinbefore referred to, and that in so doing they exceeded the authority conferred upon them by law. Your committee find, however, that the returning board in so doing acted not fraudulently but in good faith; and that in their construction of the law under which they acted they were sustained by precedents and by able legal opinions.

They were charged by Mr. Spofford with having committed forgery in altering the statement of votes from the parish of Vernon. Testimony in reference to that matter was taken at great length by the Field and Morrison committees of the House and the Howe committee of the Senate. It clearly and conclusively shows, in the opinion of your committee, that the returning officers had no motive to commit such crime; that they before had published the true statement of the vote, and must therefore have known that if such a crime was committed it would be immediately detected; and that the real, the only criminal, was the witness by whose hand the alterations were made, who confessed that he did not know the true vote had been published, who had the strongest personal motives to commit the crime, and who testified with the understanding that he should have a good office if Mr. Tilden was elected.

But the law is clear that, even had the returning officers been guilty of fraud, or had mistakenly exceeded their authority, it was the right and the duty of the persons returned by them as elected to take their seats in the general assembly. The law on this point

is thus laid down by Cushing in his Law and Practice of Legislative Assemblies, page 52, section 141:

"It remains to be observed, in conclusion, that the proceedings of these [returning] officers, from the necessity of the case, are, in the first instance, uncontrollable by any other authority whatever; so that if, on the one hand, notwithstanding an election has been effected, the returning officers refuse or neglect to make the proper return, the party thereby injured is without remedy or redress until the assembly to which he is chosen has examined his case and adjudged him to be duly elected; and, on the other hand, if the returning officers make a return when no election has in fact taken place, or of one who is not eligible, the person returned will not only be entitled, but it is his duty, to assume and discharge the functions of a member until his return and election are adjudged void."

A strong case in point occurred in the State of New Hampshire in 1875. The governor and council of that State, whose duty it was to count the votes for and issue certificates of election to State senators, rejected and threw out 3,771 votes, being all those cast and returned for Natt Head, a candidate for senator, upon the ground that the name by which he had been universally known, by which he had been commissioned adjutant-general of the State, and which he had regarded and used as his real name during many years of business and political life, was not his full Christian name. They also threw out and rejected 46 votes cast for Author Dearing, also a candidate for senator, on the ground that he was not a resident of the State. By such action the governor and council were enabled to give certificates of election to James Priest and John Proctor, thus giving the Democrats the control of the senate. Application was made to the supreme court of the State, as provided for by the constitution, for the opinion of said court upon the effect of such action. In their opinion, which may be found in the fifty-sixth volume of New Hampshire Reports, the court say:

"By this action of the governor and council, whether it be regarded as within or exceeding their constitutional powers, Messrs. Priest and Proctor received the usual credentials, which authorized them to assemble with the other ten senators and take the oath of office; and they thereupon became senators, subject to the constitutional authority of the senate as final judges of the qualifications and elections of its members."

When your committee decided to go behind the certificates of the returning officers, and to seek the real merits of the case in the thousands of pages of printed testimony taken for the use of the Senate and House, Mr. Spofford contended that your committee should simply ascertain the number of votes deposited in the ballot-boxes at the election. Your committee believe, however, that if their inquiry is to extend beyond the question as to who were the lawful governor of Louisiana and the lawful members of the general assembly, it should go far enough to ascertain how far the freedom of election was impaired by intimidation, violence, and crime. The law on this subject is thus stated by Cushing in his Law and Practice of Legislative Assemblies, pages 67, 68, section 181:

"The great principle, which lies at the foundation of all elective governments, and is essential indeed to the very idea of election, is that the electors shall be free in the giving of their suffrages. This principle was declared by the English Parliament, with regard to elections in general, in a statute of Edward I, and with regard to elections of members of Parliament, in the Declaration of Rights. The same principle is asserted or implied in the constitutions of all the States of the Union. Freedom of election is violated by external violence, by which the electors are constrained, or by bribery, by which their will is corrupted; and in all cases where the electors are prevented, in either of these ways, from the free exercise of their right, the election will be void without reference to the number of votes thereby affected."

The evidence clearly proves, and your committee believe, that by intimidation, violence, and crime freedom of election was utterly destroyed at those polls in the ten parishes heretofore referred to, whose votes were rejected by the returning officers; that in throwing out such polls and declaring the Republican candidates elected, the returning officers did that which they believed to be legal, and which was really equitable and just, and what the two houses of the general assembly would have been bound in law to do with the facts before them. They believe, therefore, that the members by whose votes the general assembly was organized, and a sufficient number of the members by whose votes Mr. Kellogg was elected, were not only lawfully but equitably entitled to their seats.

It is contended by Mr. Spofford that the legislature which elected Mr. Kellogg and the governor who signed his credentials have vanished from political existence, and ceased to have any authority in the State of Louisiana, and that, therefore, if for no other reason, his own election is valid. Your committee find that at and after the organization of the legislature which elected Mr. Kellogg an overwhelming array of armed and organized military force was used to destroy and crush out the lawful State government of Louisiana. By it the courts were overthrown and annihilated, and under its constantly

impending menace the lawful legislature gradually melted away, and its terrorized members sought safety in the so-called Nicholls legislature or abdicated their rights.

By such, and perhaps other equally illegal means, the so-called Nicholls legislature at length came to contain an undisputed majority of the members lawfully elected to the general assembly; and on the 24th day of April that legislature chose Mr. Spofford, the contestant, a Senator of the United States. Your committee are of the opinion that his claim is not well founded. Until and after the election of Mr. Kellogg, Governor Packard, and what is known as his legislature, were *de facto* and *de jure* the government of Louisiana. Upon that legislature devolved the duty of electing a Senator of the United States. That duty was performed by them in the election of Mr. Kellogg. No subsequent events, especially successful revolution, through treasonable force, could undo what had been lawfully done. The doctrine contended for by Mr. Spofford, if established, would render insecure all political vested rights. It would offer a premium to overthrow by force the result of every sharply contested election, and at no distant day reduce this country to the unhappy condition of those wretched communities which are continually a prey to disorder and civil war.

Your committee therefore report the following resolutions, and recommend their passage:

Resolved, That William Pitt Kellogg is, upon the merits of the case, lawfully entitled to a seat in the Senate of the United States from the State of Louisiana for the term of six years, commencing on the 4th day of March, 1877, and that he be admitted thereto upon taking the proper oath.

Resolved, That Henry M. Spofford is not entitled to a seat in the Senate of the United States.

VIEWS OF THE MINORITY.

On the 18th day of October last the Senate referred to the Committee on Privileges and Elections a resolution, of which the following is a copy:

"*Resolved*, That the credentials of Henry M. Spofford, claiming to be a Senator from the State of Louisiana, be referred to the Committee on Privileges and Elections; and the said committee shall also consider and report upon the credentials of William Pitt Kellogg."

That committee having had the subject embraced by that resolution under consideration, a majority of the committee have agreed to a report in favor of seating Mr. Kellogg as Senator. The undersigned, members of the committee, do not concur in that report and beg leave to submit to the Senate some of the reasons which impel them to dissent.

An election was held in the State of Louisiana on the 7th day of November, A. D. 1876, for a governor and members of the legislature. Francis T. Nicholls and Stephen B. Packard each claimed that he was elected governor at that election, and on and after the 8th day of January last each claimed to be the governor of that State. Two rival bodies of men composed of persons claiming to have been elected at that election were organized on the 1st day of January last in the city of New Orleans, and each claimed to be the lawful legislature of the State, one of these bodies commonly called "the Nicholls legislature" and the other "the Packard legislature." This conflict of claim, aggravated by the recollections of like repeated contests in the past, produced general angry commotions among the contestants and the people which seriously threatened the peace of society and a state of anarchy. Detachments of the Army of the United States were employed for many weeks to preserve the peace and prevent bloodshed. It will not be denied that the people of that State of all classes and conditions were profoundly and fearfully agitated.

At length this conflict and contest of claim was peacefully settled, and Mr. Nicholls was and ever since that time has acted and been recognized as governor by all the coordinate branches of the State government and the people generally, and also by the President and other authorities of the United States having occasion to recognize and communicate with the governor of that State. And what has been designated as "the Nicholls legislature" has likewise been so recognized as the lawful and only legislature, and its acts purporting to be statutes, passed since its first organization, have been regularly published and recognized as laws of that State by all departments of the State government and the people. Throughout the State the so-called "Packard legislature" has entirely disappeared, and most of its members—all those lawfully elected—have taken seats in the lawful legislature. This settlement has happily brought peace, order, and wholesome government out of fearful strife and disorder. It seems to be gratefully accepted by the great mass of the people of that State of both colors, and the few malcontents, if any, are moved by considerations of personal interest.

After the settlement referred to, "the Nicholls legislature" elected Henry M. Spofford to be a Senator in the United States Senate, "the Packard legislature" having a few

days after its pretended organization, on the —— day of January last, pending the contest, and in the midst of disorder, purported to elect Mr. Kellogg Senator. Indeed, the facts and circumstances point strongly to the conclusion that the main if not the only purpose of "the Packard legislature" organization was to elect Mr. Kellogg Senator. But be this as it may, the body that undertook to elect him had no legal existence, as will hereafter appear. He purported to be elected pending a heated contest as to its legality, and since that time it has abandoned its organization and claim, and most of its members went into and became part of "the Nicholls legislature," and voted for Mr. Spofford.

Looking to the permanent peace and well-being of the people of Louisiana, after many years of discord and strife which have agitated the people of the whole Union, as well as the strict right, the undersigned deemed it important in the highest degree that the Senate should accept that settlement, made by the authorities and accepted by the people, as a finality; and, looking to that end, Mr. Hill in committee offered a resolution in these words:

"The controversies heretofore existing in the State of Louisiana as to which of two rival bodies was the legislature of that State and as to which of two rival claimants was the governor of said State having been settled by the State itself since the last adjournment of the Senate,

"*Resolved*, That the Senate do recognize and accept said settlement as final."

This resolution was rejected by the unanimous vote of the Republicans of the committee, while it received only the votes of the undersigned. We solemnly protest against reopening political controversies in Louisiana, and sincerely deplore the occasion for doing so. Let the grave responsibility rest with those who have insisted upon doing so.

The majority of the committee having thus determined to ignore the settlement referred to, it was then deemed necessary to examine fully and fairly the real merits of the claims respectively of Messrs. Spofford and Kellogg; and with that view Mr. Merrimon in committee offered a resolution in these words:

"*Resolved*, That the committee proceed to examine and ascertain the substantial merits of the respective claims of Hon. W. P. Kellogg and Hon. H. M. Spofford to a seat in the Senate as a Senator from the State of Louisiana, and to this end to inquire particularly which, or whether either, of the two rival bodies claiming to be the legislature of said State, in January and April last, was the true and lawful legislature of said State."

This resolution was unanimously adopted after hearing the contestants at length, Mr. Kellogg being heard by his counsel, Mr. Shellabarger. The contestants were each requested to indicate what testimony he desired to produce, and after debate they were requested to confer and see what state of facts they could agree upon touching controverted material points at issue. Statements were submitted to Mr. Kellogg touching the result of the election in parishes indicated, and Mr. Kellogg made a statement in that respect in reply. These statements were received as evidence, and it was further agreed to receive the testimony, or so much thereof as may be pertinent, taken by Congressional committees commonly known as the "Howe committee," the "Morrison committee," the "Sherman committee," and the "Field committee," touching Louisiana affairs. Mr. Spofford did not object to the reception of this testimony, but he strenuously insisted on being allowed to take testimony in support of the several allegations specified by him, as follows: He offered testimony to prove—

"1. That the facts relative to the election of Tremoulet, Cressy, and Rolle, from the seventh representative district of New Orleans, were sustantially as set forth in the statement read by H. M. Spofford in his argument before this committee on the 24th October, 1877.

"2. That the composition, votes for Senator, and political proclivities of the legislature on the 24th April, 1877, when H. M. Spofford was elected Senator, were substantially as set forth in the aforesaid argument.

"3. That by the actual returns or statements as made in duplicate by the supervisors of registration (and assistant supervisors), with their appointees, the commissioners of election, and sent, one set to the clerk of the district court of each parish in the county and to the secretary of state in the city, and the other set to the returning board (so called), showed a majority of votes actually cast throughout the State of about 8,000 votes for Nicholls and Wiltz over Packard and Antoine for the offices of governor and lieutenant-governor in the election that took place in Louisiana November 7, 1876.

"4. Besides these specific violations of the constitution and of the law under which they pretended to act, I charge that the conduct of the returning officers in suppressing polls and changing the result of the constitutional returns was clandestine, collusive, tyrannical, and unjust; that the real work of conducting an election under pretext of compiling votes was proceeded with in a secret chamber by a corps of partisan clerks, while the occasional open sessions of the board were side-shows, devised to screen what was going on within; that arbitrary rules of evidence were established for pretended con-

tests, and changed so often and abruptly that no fair trial could be had or was had before the board; that illegal complaints were constantly received and illegal evidence admitted for the purpose of setting aside polls that were in the way of such candidates as the board desired to elect; and that Mr. Kellogg himself, then governor, joined in making illegal complaints and inducing the board to consider them.

"5. I am informed and so charge that the returns from Vernon Parish, after they came into possession of the returning officers, and while they were under their control, were fraudulently altered by a change of figures, tantamount to a forgery of a public record; that the board knew what the figures upon those returns were before their alteration, and yet after the alteration promulgated the results of said forgery as the true returns; that by such fraudulent alteration E. E. Smart, candidate for representative in the State assembly, who had in fact and according to the returns as they first came to the board defeated his competitor, Brown, was left behind, and Brown, the defeated candidate, falsely declared elected; and that said Brown took his seat in the Packard house, and figures on the journal as present on the 2d of January, 1877, when there was a pretended count of votes for governor and lieutenant-governor in joint assembly, and perhaps on one or two other occasions, but that he afterward abandoned that body and went home, acknowledging that he never had been elected."

We are of opinion that the testimony so proposed by Mr. Spofford is material, and ought, in justice to him and the Senate, to have been received. Besides, it cannot be truly said that the respective claims of the contestants have been decided upon their "substantial merits" when one of them is not allowed to produce material testimony which he offers and is anxious to produce. And it may be that a decision made by the Senate now, without fair opportunity to produce such testimony, may be reviewed and reversed at some future time. It is well to put an end to controversy now by allowing both the contestants the fullest and fairest opportunity to produce all material testimony. We think, therefore, that the whole matter ought to be recommitted to the committee, to the end the proposed testimony may be taken.

The following provisions of the constitution of Louisiana are material to a proper understanding of the points raised in the contest now under consideration:

"ART. 15. The legislative power of the State shall be vested in two distinct branches, the one to be styled the house of represenatives, the other the senate, and both the general assembly of the State of Louisiana.

"ART. 16. The members of the house of representatives shall continue in office for two years from the day of the closing of the general elections.

"ART. 17. Representatives shall be chosen on the first Monday in November every two years, and the election shall be completed in one day. The general assembly shall meet annually on the first Monday in January, unless a different day be appointed by law, and their sessions shall be held at the seat of government.

"ART. 19. Elections for members of the general assembly shall be held at the several election precincts established by law.'

"ART. 27. The members of the Senate shall be elected for the term of four years; and when assembled the senate shall have power to choose its own officers except as hereinafter provided.

"ART. 31. At the first session of the general assembly after this constitution goes into effect the senators shall be divided equally by lot into two classes; the seats of the senators of the first class to be vacated at the expiration of the term of the first house of representatives; those of the second class at the expiration of the term of the second house of representatives, so that one-half shall be chosen every two years successively. When a district shall have elected two senators their respective terms of office shall be determined by lot between themselves.

"ART. 33. Not less than a majority of the members of each house of the general assembly shall form a quorum to transact business; but a smaller number may adjourn from day to day, and shall have full power to compel the attendance of absent members.

"ART. 34. Each house of the general assembly shall judge of the qualifications, election, and returns of its members; but a contested election shall be determined in such manner as may be prescribed by law.

"ART. 46. Returns of all elections for members of the general assembly shall be made to the secretary of state.

"ART. 48. The supreme executive power of the State shall be vested in a chief magistrate, who shall be styled the governor of the State of Louisiana. He shall hold his office during the term of four years, and, together with the lieutenant-governor, chosen for the same term, be elected as follows: The qualified electors for representatives shall vote for governor and lieutenant-governor at the time and place for voting for representatives; the returns of every election shall be sealed up and transmitted by the proper returning officer to the secretary of state, who shall deliver them to the speaker of the house of representatives on the second day of the session of the general assembly then

to be holden. The members of the general assembly shall meet in the house of representatives to examine and count the votes. The person having the greatest number of votes for governor shall be declared duly elected; but in case of a tie vote between two or more candidates one of them shall immediately be chosen governor by joint vote of the members of the general assembly. The person having the greatest number of votes polled for lieutenant-governor shall be lieutenant-governor; but in case of a tie vote between two or more candidates, one of them shall be immediately chosen lieutenant-governor by joint vote of the members of the general assembly.

"ART. 51. The governor shall enter on the discharge of his duties on the second Monday in January next ensuing his election, and shall continue in office until the Monday next succeeding the day that his successor shall be declared duly elected, and shall have taken the oath or affirmation required by the constitution.

"ART. 73. The judicial power shall be vested in a supreme court, in district courts, in parish courts, and in justices of the peace.

"ART. 94. No judicial powers, except as committing-magistrates in criminal cases, shall be conferred on any officers other than those mentioned in this title, except such as may be necessary in towns and cities; and the judicial powers of such officers shall not extend further than the cognizance of cases arising under the police regulations of towns and cities in the State. In any case where such officers shall assume jurisdiction over other matters than those which may arise under police regulations, or under their jurisdiction, as committing-magistrates, they shall be liable to an action of damages in favor of the party injured, or his heirs; and a verdict in favor of the party injured shall *ipso facto* operate a vacation of the office of said officer.

"ART. 103. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting under adequate penalties all undue influence thereon from power, bribery, tumult, or other improper practice.

"ART. 107. In all elections by the people the vote shall be taken by ballot; and in all elections by the senate and house of representatives, jointly or separately, the vote shall be given *viva voce*.

"ART. 133. No judicial powers shall be exercised by clerks of courts."

And the following sections from the statute of that State approved November 20, 1872, commonly called the election law:

"SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened*, That all elections for State, parish, and judicial officers, members of the general assembly, and for members of Congress shall be held on the 1st Monday in November, and said election shall be styled the general election. They shall be held in the manner and form and subject to the regulations hereinafter prescribed, and in no other.

"SEC. 2. *Be it further enacted, &c.*, That five persons, to be elected by the senate from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers. The returning officers shall after each election, before entering upon their duties, take and subscribe to the following oath before a judge of the supreme or any district court:

"'I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election: So help me God.'

"Within ten days after the closing of the election said returning officers shall meet in New Orleans to canvass and compile the statement of votes made by the commissioners of election, and make returns of the election to the secretary of state. They shall continue in session until such returns have been compiled. The presiding officer shall, at such meeting, open, in the presence of the said returning officers, the statements of the commissioners of election, and the said returning officers shall, from said statements, canvass and compile the returns of the election in duplicate; one copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation, by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The return of the election thus made and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers, until set aside after contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned.

"SEC. 3. *Be it further enacted, &c.*, That in such canvass and compilation the return-

ing officers shall observe the following order: They shall compile first the statements from all polls or voting places at which there shall have been a fair, free, and peaceable registration and election. Whenever from any poll or voting place there shall be received the statement of any supervisor of registration or commissioner of election, in form as required by section 26 of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented or tended to prevent a fair, free, and peaceable vote of all qualified electors entitled to vote at such poll or voting place, such returning officers shall not canvass, count, or compile the statement of votes from such poll or voting places until the statements from all other polls or voting places shall have been canvassed and compiled. The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting place; and if from the evidence of such statement they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning officers shall canvass and compile the vote of such poll or voting place with those previously canvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If, after such examination, the said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting place, but shall exclude it from their returns: *Provided*, That any person interested in said election by reason of being a candidate for office shall be allowed a hearing before said returning officers upon making application within the time allowed for the forwarding of the returns of said election.

"SEC. 8. *Be it further enacted, &c.*, That the election at each poll or voting place shall be presided over by three commissioners of election, residents of the parish for at least twelve months next preceding the day of election, who shall be selected from different political parties, and be of good standing in the party to which they belong, and who shall, before entering upon the discharge of their duties, take and subscribe the oath prescribed for State officers. Should only one of the commissioners appointed be present at the hour for opening the poll, he shall appoint another, and both together shall appoint a third; and the commissioners so appointed shall take the oath and perform all the duties of commissioners of election in the same manner as if they had been appointed as provided for regular appointment of commissioners by this act. Any one of the commissioners shall be authorized to administer the oath to the other commissioners. The commissioners of election for the several wards in the city of New Orleans shall be appointed by the mayor and administrators of the city of New Orleans.

"SEC. 13. *Be it further enacted, &c.*, That it shall be the duty of the commissioners of election, at each poll or voting place, to keep a list of the names of the persons voting at such poll or voting place, which list shall be numbered from one to the end; and said list of voters, with their names and numbers as aforesaid, shall be signed and sworn to as correct by the commissioners, immediately on closing of the polls, and before leaving the place, and before opening the box. If no judge or justice of the peace, or other person authorized to administer such oath be present to do so, it may be administered by any voter. The votes shall be counted by the commissioners at each voting place, immediately after closing the election and without moving the boxes from the place where the votes were received, and the counting must be done in the presence of any bystander or citizen who may be present. Tally-lists shall be kept of the count, and after the count the ballots counted shall be put back into the box and preserved until after the next term of the criminal or district court, as the case may be; and in the parishes, except Orleans, the commissioners of election, or any one of them selected for that purpose, shall carry the box and deliver it to the clerk of the district court, who shall preserve the same as above required; and in the parish of Orleans the box shall be delivered to the clerk of the first district court for the parish of Orleans, and be kept by him as above directed.

"SEC. 26. *Be it further enacted, &c.*, That in any parish, precinct, ward, city, or town in which during the time of registration, or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences, at any place within said parish, or at or near any poll or voting place, or place of registration or revision of registration, which riot, tumult, acts

of violence, intimidation, and disturbance, bribery, or corrupt influences shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioners of election, if such riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences occur on the day of election, or of the supervision of registration of the parish, if they occur during the time of registration, or revision of registration, to make in duplicate and under oath a clear and full statement of all the facts relating thereto and of the effect produced by such riot, tumult, acts of violence, intimidation, and disturbances, bribery, or currupt influences in preventing a fair, free, peaceable, and full registration or election, and of the number of qualified voters deterred by such riots, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences from registering or voting, which statement shall also be corroborated under oath by three respectable citizens, qualified electors of the parish. When such statement is made by a commissioner of election or a supervisor of registration, he shall forward it in duplicate to the supervisor of registration of the parish, if in the city of New Orleans to the secretary of state, one copy of which, if made to the supervisor of registration, shall be forwarded by him to the returning officers provided for in section 2 of this act, when he makes the returns of election in his parish. His copy of said statement shall be so annexed to his returns of elections, by paste, wax, or some adhesive substance, that the same can be kept together, and the other copy the supervisor of registration shall deliver to the clerk of the court of his parish for the use of the district attorney.

"SEC. 43. *Be it further enacted, &c.*, That immediately upon the close of the polls on the day of election, the commissioners of the election at each poll or voting place shall proceed to count the votes, as provided in section 13 of this act, and after they shall have so counted the votes and made a list of the names of all the persons voted for, and the offices for which they were voted for, and the number of votes received by each, the number of ballots contained in the box, and the number rejected, and the reasons therefor, duplicates of such lists shall be made out, signed and sworn to by the commissioners of election of each poll, and such duplicate lists shall be delivered, one to the supervisor of registration of the parish, and one to the clerk of the district court of the parish, and in the parish of Orleans to the secretary of state, by one or all such commissioners in person, within twenty-four hours after the closing of the polls. It shall be the duty of the supervisors of registration, within twenty-four hours after the receipt of all the returns for the different polling places, to consolidate such returns, to be certified as correct by the clerk of the district court, and forward the consolidated returns, with the originals received by him, to the returning officers provided for in section 2 of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed, and forwarded by mail. He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offenses specified in section 26 of this act, if any there be, together with all memoranda and tally-lists used in making the count, and statement of the votes.

"SEC. 44. *Be it further enacted, &c.*, That it shall be the duty of the secretary of state to transmit to the clerk of the house of representatives and the secretary of the senate of the last general assembly a list of the names of such persons as, according to the returns, shall have been elected to either branch of the general assembly; and it shall be the duty of the said clerk and secretary to place the names of the representatives and senators elect so furnished upon the roll of the house and of the senate, respectively; and those representatives and senators whose names are so placed by the clerk and secretary, respectively, in accordance with the foregoing provisions, and none other, shall be competent to organize the house of representatives or senate. Nothing in this act shall be construed to conflict with article 34 of the constitution of the State."

The senate branch of the legislature of Louisiana is composed of thirty-six senators, nineteen being a quorum; the house branch is composed of one hundred and twenty members, sixty-one being a quorum. The election for governor and members of the legislature, styled the "general election," is held biennially, on the first Monday in November.

It will be observed that section 2, set forth above, of the statute regulating the manner of holding elections, provides for five "returning officers" for all elections in the State, commonly called "the returning board." In view of the constitutional provisions above cited, this statutory provision is strange and anomalous. It suggests and imports a dishonest purpose; it savors of fraud; in the natural order of things, leaving out of view for the moment that it contravenes the constitution, it is unnecessary, illogical, and absurd, and it is not surprising that the returning board has been one of the chief instrumentalities in the hands of desperate adventurers in producing the disorders and stormy conflicts that have disgraced and cursed the State and people of Louisiana ever since it came into existence. What necessary, reasonable, or honest purpose it can serve we cannot see, and its whole history shows that it has accomplished much and lasting evil.

The statutory clause providing for "the returning board," so far as it affects elections for governor and members of the legislature, manifestly comes in direct conflict with the constitution of Louisiana in two respects:

1. The forty-sixth article provides that "returns of all elections for members of the general assembly shall be made to the secretary of state:" and it is provided in article 48: * * * "The qualified electors for representatives shall vote for governor and lieutenant-governor at the time and place for voting for representatives: the returns of every election shall be sealed up and transmitted by the proper returning officer to the secretary of state, who shall deliver them to the speaker of the house of representatives on the second day of the session of the general assembly then to be holden."

The term "returns" so used in the constitution plainly means the returns as made up by the election officers in the several parishes. If the counting, tabulating, and certifying the votes by such officers is not making up the "returns," and if such officers are not returning officers, then what is the statement of the votes, and what are such officers properly termed? What office do they perform? This is made the more manifest by the almost universal use of the term "returns" in connection with elections in the State of Louisiana before the existence of the returning board, and in most if not all the States in the Union. The constitution of Louisiana contains many provisions in reference to elections, and if it had been intended to attach such unusual meaning to the term "returns," such purpose would have been indicated by apt words. As there is no such unusual meaning indicated, the term must be taken in its ordinary acceptation when used in connection with elections. The clause of the statute providing for the returning board requires that the "returns" shall be sent by the proper returning officers to "the returning board," instead of to the secretary of state, as the constitution provides, and being so in conflict with the constitution it is null and void.

2. Article 73 of the constitution provides: "The judicial power shall be vested in a supreme court, in district courts, in parish courts, and in justices of the peace;" and article 94 provides: "No judicial powers, except as committing magistrates in criminal cases, shall be conferred on any officers other than those mentioned in this title, except such as may be necessary in towns and cities, and the judicial powers of such officers shall not extend further than the cognizance of cases arising under the police regulations of towns and cities in the State."

The title from which these extracts are taken is styled in the constitution "Judiciary department;" it provides for courts and the distribution of judicial power, but returning officers, or any like officers, are not mentioned in it, except by general terms to exclude them, and no judicial power is conferred upon them by it.

The act creating "the returning board" undertakes to confer upon it very high and important judicial powers. In section 3, above set forth, it undertakes to empower and confer jurisdiction upon "the returning board" to investigate touching riots, disturbances, &c., and to decide to what extent the same affected the election at any polling place, and how, to adjudicate that the vote of the poll or voting place shall be counted, or cast out wholly and rejected; to examine further testimony, to send for persons and papers, and to allow persons interested in such elections to come before them and assert and defend their rights. And by necessary implication, it is intended to confer all judicial power essential to determine all such questions as may come under their jurisdiction. But the constitution, as we have seen, expressly forbids that any judicial power shall be conferred upon such officers, and the statutory provision in question is therefore null and void.

It may be said that if the returning board and its acts are nullities then the election must fail absolutely. This does not follow; but if it should, this is no excuse or justification, and cannot put life into the statute when there is a plain and palpable violation of the constitution. But such consequences cannot follow. The returning officers designated by the constitution must send the returns to the secretary of state, and the legislature may be duly organized according to the ordinary rules of general parliamentary law. These are well understood, and in some States they alone prevail, and in the House of Representatives they prevailed for a long while.

But granting, for the argument, that the returning board had a constitutional existence, it plainly exceeded its powers in two material respects: 1. The statute regulating the manner of holding elections provides (see section 2, above set out), in reference to the returning board, as follows: "The presiding officer shall at such meeting open, in the presence of the said returning officers, the statements of the commissioners of election, and the said returning officers shall, from said statements, canvass and compile the returns of the election in duplicate; one copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation, by printing in the official journal and such other newspaper as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly elected. The returns of the election thus

made and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers until set aside after contest according to law of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected who are required by law to be commissioned."

Now, this provision is very material; it is not merely directory, it is mandatory and essential. "The statements of the commissioners of election" are made by the officers at the polls, who held the election and knew exactly what votes were polled and under what circumstances; and, besides, these statements are sworn by the commissioners.

The fact is, that in ascertaining the result of the election the returning board did not, from the statements of the commissioners of election, "canvass and compile the returns of the election;" but, on the contrary, they canvassed and compiled the returns from the consolidated returns made up by the supervisors, as provided in section 43 of the statute set out above. This conduct on the part of the returning board was not only unlawful, but the testimony goes to show that it was done willfully; that in repeated instances the commissioners' returns did not correspond with the supervisors' consolidated returns; that the latter had been so made up falsely, and always in favor of the Republican candidates, to the extent of some 3,500 votes.

2. Section 26, set out above, of the statute referred to, provides that in case of riot, and other offenses specified, it shall be the duty of the commissioner or supervisor, as specified, to make under oath a clear and full statement of all the facts connected with such unlawful acts, and the effect of the same upon the election, and such statement must be corroborated under oath by three respectable citizens, qualified electors of the parish; such statements must be sent to the returning board, attached by wax or some adhesive substance to the returns of election. Section 3, set out above, of said act, prescribes the duties of the returning board in cases where such affidavits shall accompany returns sent to them.

It will be seen that in one contingency they must not disturb the return, but count it; in another contingency they must reject it, and refuse to count it. Now, in plain violation of this statute in the respect last mentioned, the returning board in repeated instances, and after they had examined the returns and saw how results could be affected to suit their wishes and interests, received affidavits alleging such offenses in various parishes and voting places, which affidavits were not made by supervisors or commissioners of election, but by other persons, and such affidavits did not accompany returns as required by law; and, pretending to act upon such affidavits, the returns were suppressed—not rejected, as allowed by law in the contingency named, but suppressed in such way as to give Republican candidates majorities where they did not receive majorities in the parishes and at the voting places named.

Mr. Kellogg admits in his statement (see it) that in the twelfth, eighteenth, and twenty-second senatorial districts the Democratic candidates had the majority of the votes cast at the polls, and, as the commissioners' returns sent to the returning board showed, that in the election of ten members of the house of representatives designated the returns of commissioners showed that Democratic candidates were elected, and the returning board so changed or suppressed the returns as to show that the Republican candidates were elected. Without reference to the fraudulent purpose of the returning board in the respects just mentioned, it had no power thus to interfere with returns and alter or suppress them. If, under the constitution, it can exist at all for any purpose, it must pursue strictly the powers conferred upon it; it has not general jurisdiction, and cannot exercise powers like a court having general jurisdiction. It exceeded its powers, transcended its jurisdiction in the respects just mentioned, and such acts, apart from fraud, were null and void.

It cannot be truly said that the returning board exceeded its jurisdiction and exercised important powers which the statute creating it did not purport to confer by inadvertence. On the contrary, the evidence shows conclusively that it assumed such powers in aid of the most flagrant frauds perpetrated by it. Indeed, its whole course of conduct, in pretending to ascertain the result of the election, manifests most strikingly the real purpose had in view in creating this strange and unnatural tribunal. It ascertained results of the election, and seeing them, with deliberation and advisedly, changed them at will; made new ones, and always in favor of the Republican candidates. The returns from the parishes showed that Nicholls, the Democratic candidate for governor, had a majority over Packard, the Republican candidate for the same office, of 8,010 votes. By the exercise of the unlawful powers already pointed out, this majority was changed to a majority in favor of Packard of 3,426 votes.

The evidence shows, and it is admitted by Mr. Kellogg, that Perkins, Democrat, had a majority for senator in the twelfth senatorial district; he beat Weber, Republican, largely, but the returning board gave the latter a certificate of election. Meredith, Democrat, had a majority over Hamlet, Republican, for the senate, for the eighteenth

senatorial district; the returning board gave Hamlet the certificate. Sandiford, Democrat, beat Blunt, Republican, for the senate, in the twenty-second senatorial district; the returning board gave Blunt the certificate.

In Ouachita Parish, Breard and Taylor, Democrats, beat Barrington and Brewster, Republicans for the house of representatives, as the parish returns show; but the returning board gave the Republicans certificates of election. In East Baton Rouge Parish, Dupré, Williams, and Young, Democrats, beat Bird, Holt, and Lane, Republicans, for the house of representatives; the returning board gave the certificates of election to the Republicans. In La Fayette Parish, Marshall T. Martin, Democrat, beat Fernest Martin, Republican (these were brothers), for the house of representatives; the Republican received the certificate of election.

In West Feliciana Parish, McGee and Ryland, Democrats, beat Swazie and Early, Republicans, for the house of representatives. The Republicans, however, received certificates of election. In Morehouse Parish, Washburn and Hammond, Democrats, beat Shelton and Blair, Republicans, for the house of representatives, but the certificates of election were given to the Republicans. In De Soto Parish, Pitts and Means, Democrats, beat Long and Johnson, Republicans; the latter received certificates of election. The returning board refused to count any returns from the parishes of Grant and East Feliciana; the returns were thrown out absolutely. The parish returns show that Lyons and Porter, Democrats, were elected from East Feliciana, and Randolph, Democrat, was elected from Grant Parish.

The parish returns show that the Democrats were elected in each instance above mentioned, and Mr. Kellogg admits that they received majorities. (See his statement made to the committee on 13th of November instant.) These changes were wrought by the returning board, not in the exercise of the powers sought to be conferred upon them by statute and in the way prescribed, but by the exercise of arbitrary power, for which there was no color of legal sanction. The statute creating the board required that it should be composed of five persons to be elected from all political parties. In fact there were but four members composing it, and all of them Republicans. The statute commanded that the vacancy should be filled by those members in office; they peremptorily refused to fill the vacancy.

In changing the results of the election as above stated, the sittings of the board were irregular; their movements were clandestine and collusive; they received illegal evidence to the end they might make pretext for suppressing polls; they received suggestions from persons not allowed by law to make them; and after they and their political associates saw that it was necessary to change results in their own interests, Mr. Spofford proposed to prove that Mr. Kellogg, then governor and a candidate for the United States Senatorship which he now claims, "joined in making illegal complaints and inducing the board to consider them."

In view of the facts and circumstances developed by the testimony received by the committee we do not hesitate—we feel constrained to declare—that the returning board in Louisiana in pretending to ascertain and determine the result of the election in that State in November last not only proceeded in many material respects without the sanction or even color of law, but perpetrated the most flagrant and shameless frauds, surpassing, if possible, any ever perpetrated by that tribunal before, and by such means undertook to change the actual result of that election so as to elect the Republican candidate for governor and give the Republicans a majority in the legislature. Their action was unlawful, willful, corrupt, concerted; and we cannot escape the conviction that it was, to say the least and best, connived at and encouraged by persons occupying important stations in and out of the State of Louisiana.

On the 1st day of January, A. D. 1877, as the constitution of Louisiana directs, the legislature designated as "the Nicholls legislature" assembled in Saint Patrick's Hall in the city of New Orleans. The following extracts from the journal of the senate, found on pages 1 and 2, show the circumstances under which it met:

"The members of this senate, duly elected, proceeded at 12 m. on the 1st of January, 1877—being the first Monday of said month—to the State capitol of the State of Louisiana, to which they were refused admittance, and which they found in the possession of a large body of metropolitan police and armed men.

"They were reliably informed of the presence of five companies of United States troops in an adjoining building, and that an entrance into the State capitol, by which the troops could be readily introduced into the senate chamber, had been especially made for that purpose. As the representatives of the people, this body considered it contrary to law and the spirit of free institutions to organize a general assembly of the State of Louisiana under a military guard calculated to overawe and intimidate the members.

"For which reasons they repaired to Saint Patrick's Hall, in the city of New Orleans, where a permanent organization has been effected."—(Senate journal, 1877, page 2.)

Then follows on the next page, 3, signed by twenty senators, making a quorum:

"The undersigned holding-over senators, and senators-elect, do hereby solemnly pro-

test against the occupation of the capitol of the State by an armed body of metropolitan police and other armed retainers, supported by a large body of Federal troops in an adjacent building immediately accessible to the State-house by a passage purposely prepared with that object in view, which illegal, arbitrary, and revolutionary proceedings have been consummated by the order and under the sanction of the governor of the State, and the lieutenant-governor as presiding officer of the senate, for the purpose of overawing and controlling the deliberations of the general assembly, and preventing the access of the members duly elected, as well as the citizens of the State, to the meetings of their servants, save upon the written permission of the governor," &c.

There were in the senate at the organization on the day it assembled twenty senators. Of these, nine were "holding-over senators," and their right is not questioned; eight new senators held certificates from the returning board, and it is admitted that S. G. Perkins, senator from the twelfth district, received a majority, he beating Weber, the Republican candidate. It is likewise admitted that T. E. Meredith received a majority of the votes cast in the eighteenth senatorial district over Hamlet, the Republican candidate. And it is also admitted that J. W. Sandiford received a majority of the votes cast in the twenty-second senatorial district over Blunt, the Republican candidate. The parish returns show these facts, and they are admitted. (See Mr. Kellogg's statement, made to the committee on the 13th of November, 1877.)

It required nineteen senators to make a quorum; twenty senators were present at, and participated in, the organization.

The following extracts from the journal of the house of representatives show the circumstances attending the organization of that body (page 1):

"HOUSE OF REPRESENTATIVES,
"*New Orleans, January* 1, 1877.

"At 12 o'clock m. the clerk of the house of representatives, in accordance with the law, took his place on the stand of the speaker of the house and stated that he had found the State-house barricaded and in the possession of the police and military of the State, placed there by order of the governor, and a militia officer in charge of the hall of the house of representatives; that he had demanded that such officers should withdraw, and the obstructions to the free ingress and egress to the State-house and hall of the house of representatives be removed; that he had been refused such demand, and would not organize the house of representatives under such circumstances, but would go elsewhere and organize that body. He then repaired to Saint Patrick's Hall, where the house was called to order."

Mr. Trezevant was the clerk who organized the house; he was clerk of the "old house" and the person authorized by law to organize the new one.

There were present and participating in the organization of the house sixty-two members, sixty-one being a quorum; of these —— held certificates from the returning board. Of those present, the parish returns show, and it is admitted (see Mr. Kellogg's statement above cited), that D. A. Breard, jr., and J. G. Taylor, of Ouachita Parish, received majorities over Barrington and Brewster, Republicans; that J. Pitts and Joe T. Means, of De Soto Parish, received majorities over Long and Johnston, Republicans; that Robert H. Ryland and J. B. McGehee, of West Feliciana, received majorities over Swazie and Early, Republicans; that W. W. Washburn and J. D. Hammond, of Morehouse Parish, received majorities over Shelton and Blair, Republicans; that James T. Williams, H. C. Young, and J. W. Dupré, of East Baton Rouge Parish, received majorities over Bird, Holt, and Lane, Republicans; that Marshall T. Martin, of La Fayette Parish, received a majority over Fernest Martin, Republican; that W. W. Carlos, of Webster Parish, received a majority over Heath, Republican; that W. B. Porter and T. B. Lyons, of East Feliciana, received all the votes cast; had no opponent; this vote the returning board threw out; that E. G. Randolph, of Grant Parish, received a majority of all the votes cast; the vote of this parish the returning board threw out.

It thus appears that "the Nicholls legislature," on the first day it assembled, had a quorum, and more than a quorum, of members who had been elected at the polls, and in fact had the right to sit. But for the unlawful and fraudulent action of the returning board, there could be no pretense for suggestion that the organization thus made was not strictly legal in all respects. Indeed, the organization was made in pursuance of the actual result of the election.

It is said, however, that whatever may have been the result of the election at the polling places throughout the State in the parishes, the legislature must be organized by those persons, and only those, who hold certificates of election from the returning board, and that without reference to the conduct of that board, whether dishonest, fraudulent, or otherwise. In reply to this view we have endeavored to show, first, that the returning board had no constitutional sanction as returning officers of the election for governor and members of the legislature, and its acts are therefore void; second, that granting for

argument's sake that it had a legal existence, it transcended its powers and jurisdiction, first, in failing to "canvass and compile" the returns of the commissioners of election, instead of the consolidated returns sent to it by the supervisors of election; and second, in that it received suggestions after seeing the returns and knowing the result as to violence, disorders, &c., otherwise than as the law allowed. And the testimony makes the dishonest purpose and fraudulent conduct of the returning board in changing results manifest.

There is, however, another answer. The Senate, in Spencer's case, after much debate, decided that when there are two rival bodies of men in a State, each claiming to be the lawful legislature, it is competent to look behind the certificate of election and see who was in fact elected at the polls. This is a recent decision, and it was sanctioned by the vote of every Republican Senator who voted on the question. We do not stop here to question the soundness of this decision; it was made by a Republican Senate and in favor of a Republican Senator. We cite the following extract from the report of the Committee on Privileges and Elections in this case. The committee say:

"When we consider that all the forms prescribed by law for canvassing and certifying an election, and for the organization of the two houses, are designed to secure to the persons actually elected the right to act in the offices to which in fact they have been elected, it would be sacrificing the end to the means were the Senate to adhere to the mere form, and thus defeat the end which the forms were intended to secure.

"The persons in the two bodies claiming to be the senate and house of representatives who voted for Spencer constituted a quorom of both houses of the members actually elected; the persons in the State-house legislature who voted for Sykes did not constitute a quorum of the two houses duly elected, but a quorom of persons certified to have been elected to the two houses."

The legislature, so organized, on the 2d day of January, 1876, canvassed the returns for governor, and declared Francis T. Nicholls elected, and on the 8th day of the same month he took the oath of office prescribed by law, and has ever since that time exercised the office of governor.

On the 24th day of April, 1877, the legislature elected the contestant, Mr. Spofford, to be a Senater in the United States Senate for six years from the 4th of March, 1877, having voted in joint assembly at least once each legislative day since the 10th of January, 1877. Each house took a vote on the 9th. The whole number of votes cast in that election was 153. Mr. Spofford received 140 votes. There were but three members of the legislature absent at the time. Of the members thus voting, 51 had been in "the Packard legislature" at the time Mr. Kellogg claims to have been elected, and voted for him. At the time Mr. Spofford was elected there was only "the Nicholls legislature" in the State, and there was no opposing or rival body.

All the acts passed by this legislature are duly published and recognized as the statutes of Louisiana. They are recognized by all the co-ordinate branches of the State government and by the whole people, and by the courts of the United States sitting in that State. The first act passed by this legislature was approved by Governor Nicholls on the 8th of January, 1877, the day he went into office.

The body of men which claimed to be the legislature of Louisiana, and commonly called "the Packard legislature," assembled in the State-house, in New Orleans, on the 1st day of January, 1877. The house was barricaded and surrounded by bodies of metropolitan police, and several companies of United States troops were kept in readiness for action in the neighborhood of the State-house. There were in the senate branch of this legislature eight "holding-over" senators and eleven persons claiming to be senators holding certificates of election from the returning board. These persons were Messrs. Blunt, Bryant, Case, Demas, Hamlet, Hooper, Sutton, Stamps, Wakefield, Wheeler, and Weber—eleven in all. These altogether make nineteen, a quorum, if they had all been elected, but Blunt, Hamlet, and Weber were defeated candidates; this the parish returns show and the fact is admitted. So that, in fact, there were in this senate but sixteen senators entitled to sit in a lawful legislature. One of these (Hamlet) having departed, left them without even a nominal quorum. Then Mr. Steven, a "holding over" senator, sitting in "the Nicholls legislature," happened to be in the State-house on business, and the sergeant-at-arms of the Packard legislature seized and took him into the senate chamber to try and restore their nominal quorum. He was taken by force, and against his will and protest, and he did not participate in anything done. The seizure of Mr. Steven was a disgraceful proceeding, and the object had in view was to make a nominal quorum in order to admit as senators, upon a feigned contest, Baker and Kelso, two candidates who were defeated at the polls, and who did not even hold certificates of election from the returning board. Steven did not vote, refused to participate, and without him there was no quorum present when Kelso and Baker were admitted.

Mr. Steven gives the following account of his seizure. He says:

"On January 1, 1877, I was one of the holding-over senators who formed the senate

of the State of Louisiana convened on that day in Saint Patrick's Hall, in the city of New Orleans.

"I was one of the committee of three appointed by the chair to inform Governor Kellogg that the senate was duly organized, and ready to receive any communication he might have to make, &c., &c. The other members of the committee were Mr. Garland, of Saint Landry, and Mr. Boatner, of Catahoula, both of whom were elected in 1876. The committee proceeded to the Saint Louis Hotel, were admitted to Governor Kellogg's office, and delivered to him in person the message with which they were charged. Upon leaving Governor Kellogg's office, I was stopped by two or three persons, who stated that they were sergeants-at-arms of the senate, and that I must accompany them to the senate chamber. I stated that the senate of the State had met in Saint Patrick's Hall on that day and had adjourned until the following day; therefore I refused to accompany them, and refused to submit to arrest.

"I was thereupon seized by two or more of these parties and pushed and dragged in the direction of the senate chamber, I resisting at every step. In this manner we reached the outside bar of the senate, where, by getting my feet against the railing, I was enabled for a few moments to make a more effectual resistance. I was finally forced to the bar of the senate. I addressed myself to the president (Lieutenant-Governor Antoine), who was in the chair, stating the circumstances which led to my arrest, protesting against the arrest, and demanding that I be permitted to withdraw. The president stated that I could only be permitted to withdraw by unanimous consent of the senate, which was refused. At this juncture Governor Kellogg came in through a door immediately in the rear of the president's desk. I appealed to him as commander-in-chief of the forces occupying the building to release me, as I considered my arrest as equivalent to a violation of a flag of truce.

"He stated he was very sorry, &c., but as the senate had me in custody he could not interfere. I then made an attempt to go out, but was seized by several persons and forced back. I took a chair and sat down with my back to the president, at the end of the center aisle. The roll was called, my name repeated probably a dozen or more times; I made no response nor gave recognition in any way, shape, or manner whatever. When the roll was called on the seating of Baker and Kelso I made no answer, nor gave sign or motion of any kind whatever.

"WILL STEVEN."

There was not at any time a lawful senate.

In the Packard house of representatives there were at no time more than sixty-eight persons present claiming to be members. Eleven of these, including Brown, of Vernon Parish, as has already appeared, were defeated at the polls, so the parish returns show, and Mr. Kellogg admits that their Democratic opponents had majorities of the votes cast. This leaves the house without a quorum of members actually elected. Mr. Kellogg, therefore, did not receive a majority of the members elected to the legislature.

The evidence shows that but for the presence of the United States troops the so-called "Packard legislature" would never have assembled, and never would have set up any claim to be a legislature; but for the presence of troops it would not have continued to exist for one hour; it never for one moment existed as a free legislative body; it was the creature of fraud and force, and as soon as the latter disappeared it fled from the face of men; it felt and realized that it had no rightful existence, and hence its friends and foes alike repudiated it. From the beginning it was a sham, a pretense, and a fraud; it passed no act, it did nothing that is recognized as law by any of the authorities in Louisiana; it did no act for which any authority claims validity, except the pretended election of the contestant, Mr. Kellogg. This is the only act it did that claims recognition, and it remains to be seen if the Senate of the United States alone will recognize and accept this single fraudulent act of a pretended legislature which the State and people of Louisiana utterly repudiate.

Treachery and fraud mark every lineament of the so-called "Packard legislature" from its incipiency, and the Senate cannot escape seeing this. But apart from fraud, where there are two rival bodies of men in a State, each claiming in good faith to be the lawful legislature, and each contests the right of the other from the beginning of their existence, and such contest is continued without intermission until one prevails and absorbs the other, so that the latter completely disappears, and all the co-ordinate branches, and all the authorities, and the great mass of the people of the State, and the President and courts of the United States, recognize the prevailing body as the lawful legislature, and all its acts passed from its beginning as laws of the State, and recognize no single act of the body so absorbed and totally disappearing, can the Senate of the United States, many months after it has so completely disappeared, recognize the body thus disappearing as the legislature of the State by admitting to the Senate as a Senator a person who claims to have been elected by such a body of men?

The statement of the proposition irresistibly suggests the answer—it cannot. The Senate may have the physical power to do so—it has not the right to do so—it can only do so by the arbitrary exercise of lawless, despotic power. Such an act on the part of the Senate could only be regarded as a defiance of the authority, right, and will of the State and an insult to its dignity; it would shock the moral sense of the American people, and afford cause for profound distrust and alarm for the safety of our system of government.

The misrule and public disorders which have afflicted the State and people of Louisiana seem to have passed away. The settlement of differences and a new administration of government resulting upon the election in November last restored peace, good order, and a wholesome government.

That State and that people have settled their political contests and strifes which have annoyed and distressed the whole country. The Senate ought not, we trust it will not, disturb that settlement and revive bitter controversies. On the contrary, we trust it will, as in law and right it must do, accept and ratify that settlement by admitting the contestant, Mr. Spofford. His credentials, in all respects, comply with requirements of law, and he is well entitled to sit as Senator.

ELI SAULSBURY.
A. S. MERRIMON.
BENJ. H. HILL.

WEDNESDAY, *November* 28, 1877.

Mr. Wadleigh rose to a question of privilege and moved that the Senate proceed to the consideration of the resolution yesterday reported by the Committee on Privileges and Elections to admit William P. Kellogg to a seat in the Senate as a Senator from the State of Louisiana.

* * * * * * *

The Senate proceeded to the consideration of the said resolution.

On motion by Mr. Thurman to amend the resolution by striking out all after the word "resolved" and in lieu thereof inserting:

"That M. C. Butler be now sworn as a Senator from the State of South Carolina,"

After debate,

On the question to agree thereto, the yeas were 30 and the nays were 30.

On motion by Mr. Edmunds, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bailey, Bayard, Beck, Cockrell, Coke, Davis of Illinois, Davis of West Virginia, Dennis, Eaton, Garland, Gordon, Harris, Hereford, Hill, Jones of Florida, Kernan, Lamar, McCreery, McDonald, McPherson, Merrimon, Morgan, Patterson, Randolph, Saulsbury, Thurman, Voorhees, Wallace, Whyte, and Withers.

Those who voted in the negative are Messrs. Allison, Anthony, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Conkling, Conover, Dawes, Dorsey, Edmunds, Hoar, Howe, Jones of Nevada, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Oglesby, Paddock, Rollins, Sargent, Saunders, Spencer, Teller, and Wadleigh.

The vote of the Senate being equally divided,

The Vice-President voted in the negative.

So the amendment was not agreed to.

Upon the announcement of the result of the vote on the amendment,

Mr. Thurman rose to a question of order, and submitted that the provision of the Constitution that the Vice-President shall have no vote unless where the Senate is equally divided does not apply to the case of seating a member; but that questions of seating a member should be left to the Senators themselves, under the provision that each House shall be the judge of the elections, qualifications, and returns of its own members; and,

After debate,

Mr. Thurman withdrew the question of order.

The question recurring on agreeing to the resolution,

Pending debate, a message was received from the House of Representatives.

* * * * * * *

The Senate resumed the consideration of the resolution to admit William Pitt Kellogg to a seat in the Senate; and,

On motion by Mr. Patterson (at 6 o'clock and 10 minutes p. m.) that the Senate adjourn, it was determined in the affirmative—yeas 29, nays 27.

* * * * * * *

[The debate is found on pages 730–749 of the Congressional Record, vol. vi.]

THURSDAY, *November* 29, 1877.

The Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to admit William Pitt Kellogg to a seat in the Senate as a Senator from the State of Louisiana; and,

Pending debate,

On motion by Mr. Conover (at 4 o'clock and 5 minutes p. m.), the Senate proceeded to the consideration of executive business.

[The debate is found on pages 749–764 of the Congressional Record, vol. vi.]

FRIDAY, *November* 30, 1877.

The Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to admit William Pitt Kellogg to a seat in the Senate as a Senator from the State of Louisiana; and,

The question being on the amendment proposed by Mr. Saulsbury to amend the resolution so as to read as follows, viz:

"Whereas it appears by the report of the minority of the Committee on Privileges and Elections that Henry M. Spofford, one of the contestants to a seat in the Senate from the State of Louisiana, did ask and demand the authority of the committee to produce testimony on the five following points at issue between the contestants, to wit:

"1. That the facts relative to the election of Tremoulet, Cressy, and Rolle, from the seventh representative district of New Orleans, were substantially as set forth in the statement read by H. M. Spofford in his argument before this committee on the 24th October, 1877.

"2. That the composition, votes for Senator, and political proclivities of the legislature on the 24th April, 1877, when H. M. Spofford was elected Senator, were substantially as set forth in the aforesaid argument.

"3. That by the actual returns or statements as made in duplicate by the supervisors of registration (and assistant supervisors), with their appointees, the commissioners of election, and sent one set to the clerk of the district court of each parish in the county and to the secretary of state in the city, and the other set to the returning board (so called), showed a majority of votes actually cast throughout the State of about 8,000 votes for Nicholls and Wiltz over Packard and Antoine for the offices of governor and lieutenant-governor in the election that took place in Louisiana November 7, 1876.

"4. Besides these specific violations of the constitution and of the law under which they pretended to act, I charge that the conduct of the returning officers in suppressing polls and changing the result of the constitutional returns was clandestine, collusive, tyrannical, and unjust; that the real work of conducting an election under pretext of compiling votes was proceeded with in a secret chamber by a corps of partisan clerks, while the occasional open sessions of the board were side-shows devised to screen what was going on within; that arbitrary rules of evidence were established for pretended contests and changed so often and abruptly that no fair trial could be had or was had before the board; that illegal complaints were constantly received and illegal evidence admitted for the purpose of setting aside polls that were in the way of such candidates as the board desired to elect; and that Mr. Kellogg himself, then governor, joined in making illegal complaints and inducing the board to consider them.

"5. I am informed, and so charged, that the returns from Vernon Parish, after they came into possession of the returning officers, and while they were under their control, were fraudulently altered by a change of figures, tantamount to a forgery of a public record; that the board knew what the figures upon those returns were before their alteration, and yet after the alteration promulgated the results of said forgery as the true returns; that by such fraudulent alteration E. E. Smart, candidate for representative in the State assembly, who had in fact and according to the returns as they first came to the board defeated his competitor, Brown, was left behind and Brown, the defeated candidate, falsely declared elected; and that said Brown took his seat in the Packard house and figures on the journal as present on the 2d of January, 1877, when there was a pretended count of votes for governor and lieutenant-governor in joint assembly, and perhaps on one or two other occasions, but that he afterward abandoned that body and went home, acknowledging that he never had been elected.

"And which request was refused by a majority of said committee: Therefore,

"*Resolved*, That the credentials of William Pitt Kellogg and of Henry M. Spofford, the contestants for the seat in the Senate from the State of Louisiana, be recommitted to the Committee on Privileges and Elections, with all the papers relating to said contest, with instructions to said committee to take testimony on the issues above mentioned."

The question being first put by the Chair on agreeing to the amendment of Mr. Sauls-

bury to the resolution reported by the committee, viz: Strike out all after the word "resolved" and in lieu thereof insert:

"That the credentials of William Pitt Kellogg and of Henry M. Spofford, the contestants for the seat in the Senate from the State of Louisiana, be recommitted to the Committee on Privileges and Elections, with all the papers relating to said contest, with instructions to said committee to take testimony on the issues above mentioned,"

It was determined in the negative—yeas 29, nays 29.

On motion by Mr. Bayard, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bailey, Bayard, Beck, Cockrell, Coke, Davis of West Virginia, Dennis, Eaton, Garland, Gordon, Harris, Hereford, Hill, Jones of Florida, Kernan, Lamar, McCreery, McDonald, McPherson, Merrimon, Morgan, Patterson, Randolph, Saulsbury, Thurman, Voorhees, Wallace, Whyte, and Withers.

Those who voted in the negative are Messrs. Allison, Anthony, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Conkling, Conover, Dawes, Dorsey, Edmunds, Hoar, Howe, Jones of Nevada, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Paddock, Rollins, Sargent, Saunders, Spencer, Teller, and Wadleigh.

So the amendment was not agreed to.

The question recurring on agreeing to the resolution,

On motion by Mr. Thurman that the Senate proceed to the consideration of executive business, it was determined in the negative—yeas 21, nay 31.

* * * * * * *

The Senate resumed the consideration of the resolution reported by the Committee on Privileges and Elections to admit William Pitt Kellogg to a seat in the Senate as a Senator from the State of Louisiana; and,

After debate,

On motion by Mr. Hill to amend the resolution by striking out all after the word "resolved" and in lieu thereof inserting:

"That Henry M. Spofford be admitted as a Senator from the State of Louisiana on a *prima facie* title, and subject to the right of William Pitt Kellogg to contest his seat,"

It was determined in the negative—yeas 27, nays 29.

On motion by Mr. Allison, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bailey, Beck, Bayard, Cockrell, Coke, Davis of Illinois, Davis of West Virginia, Dennis, Eaton, Garland, Gordon, Harris, Hereford, Hill, Jones of Florida, Kernan, McCreery, McDonald, McPherson, Merrimon, Morgan, Randolph, Saulsbury, Thurman, Voorhees, Wallace, and Withers.

Those who voted in the negative are Messrs. Allison, Anthony, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Conkling, Conover, Dawes, Dorsey, Edmunds, Hoar, Howe, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Oglesby, Paddock, Patterson, Rollins, Saunders, Spencer, Teller, and Wadleigh.

So the amendment was not agreed to.

The question recurring on agreeing to the resolution in the following words:

"*Resolved*, That William Pitt Kellogg is, upon the merits of the case, lawfully entitled to a seat in the Senate of the United States from the State of Louisiana for the term of six years commencing on the 4th day of March, 1877, and that he be admitted thereto upon taking the proper oath;

"*Resolved*, That Henry M. Spofford is not entitled to a seat in the Senate of the United States,"

It was determined in the affirmative—yeas 30, nays 28.

The yeas and nays having been heretofore ordered,

Those who voted in the affirmative are Messrs. Allison, Anthony, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Conkling, Conover, Dawes, Dorsey, Edmunds, Hoar, Howe, Jones of Nevada, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Oglesby, Paddock, Patterson, Rollins, Saunders, Spencer, Teller, and Wadleigh.

Those who voted in the negative are Messrs. Bailey, Bayard, Beck, Cockrell, Coke, Davis of Illinois, Davis of West Virginia, Dennis, Eaton, Garland, Gordon, Harris, Hereford, Hill, Jones of Florida, Kernan, Lamar, McCreery, McDonald, McPherson, Merrimon, Morgan, Randolph, Saulsbury, Thurman, Voorhees, Wallace, and Withers.

So the resolution was agreed to.

* * * * * * *

Mr. William Pitt Kellogg then appeared, and the oath prescribed by law having been administered to him by the Vice-President, he took his seat in the Senate.

[The debate is found on pages 767-797 of the Congressional Record, vol. vi.]

[First session of the Forty-sixth Congress.]

FRIDAY, *March* 21, 1879.

Mr. Jonas presented a memorial of Henry M. Spofford, of Louisiana, praying an investigation into his claim to a seat in the Senate as Senator from that State; which was referred to the Committee on Privileges and Elections.

WEDNESDAY, *April* 16, 1879.

Mr. Hill, of Georgia, from the Committee on Privileges and Elections, reported the following resolution:

"*Resolved*, That the Committee on Privileges and Elections be authorized to have printed for its use the arguments before it in the case of Spofford against Kellogg relative to a seat in the Senate from the State of Louisiana, with such evidence, papers, and documents relative to the case as it may deem proper."

The Senate proceeded, by unanimous consent, to consider the said resolution; and having been amended on the motion of Mr. Hoar, the resolution, as amended, was agreed to, as follows:

"*Resolved*, That the Committee on Privileges and Elections be authorized to have printed for its use the arguments before it in the case of Spofford against Kellogg relative to a seat in the Senate from the State of Louisiana, with such other proceedings in relation to the case as it may deem proper."

[The debate is found on pages 468, 469 of the Congressional Record, vol. ix, part 1.]

THURSDAY, *May* 1, 1879.

Mr. Saulsbury, from the Committee on Privileges and Elections, reported the following resolution; which was ordered to be printed:

"*Resolved*, That the Committee on Privileges and Elections, to which was referred the memorial of Henry M. Spofford, praying permission to produce evidence relating to the right of Hon. William Pitt Kellogg to the seat in the Senate held by him from the State of Louisiana, and in support of the claim of said petitioner thereto, be, and said committee is hereby, instructed to inquire into the matters alleged in said petition, and for that purpose said committee is authorized and empowered to send for persons and papers, administer oaths, and do all such other acts as are necessary and proper for a full and fair investigation in the premises. Said committee may, in its discretion, appoint a subcommittee of its own members to make such investigation in whole or in part; which subcommittee shall have authority to employ a clerk, stenographer, and sergeant-at-arms, and shall have all the powers of the general committee to administer oaths and send for persons and papers, and may make such investigation either in Washington or in the State of Louisiana; and said committee or its subcommittee may sit in vacation."

FRIDAY, *May* 2, 1879.

The Senate proceeded to consider the resolution yesterday reported by Mr. Saulsbury, from the Committee on Privileges and Elections, instructing said committee to inquire into the matters alleged in the petition of Henry M. Spofford, relating to the right of Hon. William Pitt Kellogg to a seat in the Senate; and

On motion by Mr. Hoar to amend the resolution by striking out all of said resolution and inserting in lieu thereof the following:

"Whereas on the 25th day of October, 1877, the Senate unanimously adopted the following resolution:

"'*Resolved*, That the Committee on Privileges and Elections on the contested cases of William Pitt Kellogg and Henry M. Spofford, claiming seats as Senators from the State of Louisiana, and whose credentials have been referred to such committee, be authorized to send for persons and papers, and administer oaths, with a view of enabling said committee to determine and report upon the title, respectively, on the merits of each of said contestants to a seat in the Senate;'

"And whereas on the 26th day of November, 1877, said committee reported the following resolutions:

"'*Resolved*, That William Pitt Kellogg is, upon the merits of the case, entitled to a seat in the Senate of the United States from the State of Louisiana for the term of six years commencing on the 4th day of March, 1877, and that he be admitted thereto upon taking the proper oath;

"'*Resolved*, That Henry M. Spofford is not entitled to a seat in the Senate of the United States;'

"And on the 30th day of November, 1877, the Senate adopted said resolution, *and*

thereafter on the same day said Kellogg was duly admitted to take the oath and took his seat as a Senator from said State for said term:

"*Resolved*, That said proceedings are final and conclusive upon the right of said Kellogg and the claim of said Spofford to said seat for said term."

Pending debate,

The President *pro tempore* announced that the morning hour had expired, and called up the unfinished business of the Senate at its adjournment yesterday.

[The debate is found on pages 1022-1024 of the Congressional Record, vol. ix, part 1.]

TUESDAY, *May* 6, 1879.

The Senate resumed the consideration of the resolution reported by Mr. Saulsbury from the Committee on Privileges and Elections, May 1, 1879, instructing said committee to inquire into the matters alleged in the petition of Henry M. Spofford, relating to the right of Hon. William Pitt Kellogg to a seat in the Senate; and,

The question being on the amendment proposed by Mr. Hoar,

Pending debate,

The Presiding Officer announced that the morning hour had expired.

[The debate is found on pages 1071-1087 of the Congressional Record, vol. ix, part 1.]

WEDNESDAY, *May* 7, 1879.

The Senate resumed the consideration of the resolution reported by Mr. Saulsbury from the Committee on Privileges and Elections, May 1, 1879, instructing said committee to inquire into the matters alleged in the petition of Henry M. Spofford, relating to the right of Hon. William Pitt Kellogg to a seat in the Senate; and,

The question being on the amendment proposed by Mr. Hoar,

After debate,

On motion by Mr. Edmunds to amend the resolution by inserting after the word "petition," in line 6, the following: "So far only as relates to any charge in said petition of personal misconduct on the part of said Kellogg which may render him liable to expulsion or censure," it was determined in the negative—yeas 20, nays 27.

On motion by Mr. Saulsbury, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Bell, Booth, Bruce, Burnside, Cameron of Wisconsin, Conkling, Edmunds, Ferry, Hill of Colorado, Hoar, Ingalls, Logan, McMillan, Morrill, Platt, Rollins, Saunders, Teller, and Windom.

Those who voted in the negative are Messrs. Bailey, Beck, Call, Coke, Davis of West Virginia, Garland, Hampton, Harris, Hill of Georgia, Houston, Jonas, Jones of Florida, Kernan, Lamar, McDonald, Maxey, Morgan, Pendleton, Randolph, Ransom, Saulsbury, Slater, Vance, Vest, Voorhees, Walker, and Withers.

So the amendment was not agreed to.

On motion by Mr. Conkling to amend the resolution by adding at the end thereof the following:

"*Provided*, That the inquiry hereby authorized shall be confined to the matters alleged in the memorial of Mr. Spofford to be new and different from those covered by the previous inquiry,"

It was determined in the negative—yeas 20, nays 27.

On motion by Mr. Saulsbury, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Bell, Booth, Bruce, Burnside, Cameron of Wisconsin, Conkling, Edmunds, Ferry, Hill of Colorado, Hoar, Ingalls, Logan, McMillan, Morrill, Platt, Rollins, Saunders, Teller, and Windom.

Those who voted in the negative are Messrs. Bailey, Beck, Call, Coke, Davis of West Virginia, Garland, Hampton, Harris, Hill of Georgia, Houston, Jonas, Jones of Florida, Kernan, Lamar, McDonald, Maxey, Morgan, Pendleton, Randolph, Ransom, Saulsbury, Slater, Vance, Vest, Voorhees, Walker, and Withers.

So the amendment was not agreed to.

The resolution having been amended on the motion of Mr. Hoar,

On motion by Mr. Edmunds to further amend the resolution by inserting after the word "that," in line 1, the following: "recognizing the validity and finality of the previous action of the Senate in the premises," it was determined in the negative—yeas 20, nays 27.

On motion by Mr. Edmunds, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Bell, Booth, Bruce, Burnside,

Cameron of Wisconsin, Conkling, Edmunds, Ferry, Hill of Colorado, Hoar, Ing Logan, McMillan, Morrill, Platt, Rollins, Saunders, Teller, and Windom.

Those who voted in the negative are Messrs. Bailey, Beck, Call, Coke, Davis of V Virginia, Garland, Hampton, Harris, Hill of Georgia, Houston, Jonas, Jones of Flo Kernan, Lamar, McDonald, Maxey, Morgan, Pendleton, Randolph, Ransom, Saulsb Slater, Vance, Vest, Voorhees, Walker, and Withers.

So the amendment was not agreed to.

On motion by Mr. Conkling to further amend the resolution by adding at the thereof the following:

"*Provided*, That such questions in said case as were fully considered and adjudge the former investigation shall not be opened under this resolution,"

It was determined in the negative—yeas 20, nays 27.

On motion by Mr. Conkling, the yeas and nays being desired by one-fifth of the ators present,

Those who voted in the affirmative are Messrs. Allison, Bell, Booth, Bruce, Burns Cameron of Wisconsin, Conkling, Edmunds, Ferry, Hill of Colorado, Hoar, Ing Logan, McMillan, Morrill, Platt, Rollins, Saunders, Teller, and Windom.

Those who voted in the negative are Messrs. Bailey, Beck, Call, Cockrell, Coke, D of West Virginia, Garland, Hampton, Harris, Hill of Georgia, Houston, Jonas, Jon Florida, Kernan, Lamar, McDonald, Maxey, Morgan, Pendleton, Randolph, Ran Saulsbury, Slater, Vance, Vest, Voorhees, Walker, and Withers.

So the amendment was not agreed to.

On motion by Mr. Logan to further amend the resolution by adding at the end the the following:

"*Provided*, That said committee be further empowered and directed to make inq and take testimony upon the matter as to whether any unlawful or corrupt means employed to disorganize the body by which William Pitt Kellogg claims to have l elected to the Senate, or to organize that by which the memorialist claims to have l elected or to secure the alleged election of the memorialist,"

During the debate,

Mr. Morgan, while addressing the Senate on the proposed amendment, having used following language:

"Has the Senator from Louisiana (Mr. Kellogg) any objection to the Committe Privileges and Elections investigating the question whether or not he bribed the m bers of the legislature that elected him?"

Mr. Edmunds raised a question of order, that it was not in order, where another ator is personally concerned and a resolution is offered affecting his character, to propo such a question.

The President *pro tempore* decided that, in the opinion of the Chair, the language by the Senator from Alabama contained no imputation upon the Senator from Louisi and was in order.

After further debate,

On the question to agree to the amendment proposed by Mr. Logan, it was determ in the negative—yeas 19, nays 28.

On motion by Mr. Logan, the yeas and nays being desired by one-fifth of the Sen present,

Those who voted in the affirmative are Messrs. Allison, Bell, Booth, Bruce, Burns Cameron of Wisconsin, Dawes, Edmunds, Ferry, Hill of Colorado, Hoar, Ingalls, Lo McMillan, Morrill, Platt, Rollins, Saunders, and Windom.

Those who voted in the negative are Messrs. Bailey, Beck, Call, Coke, Davis of V Virginia, Garland, Groome, Hampton, Harris, Hill of Georgia, Houston, Jonas, J of Florida, Kernan, Lamar, Maxey, Morgan, Pendleton, Randolph, Ransom, Saulsb Slater, Vance, Vest, Voorhees, Walker, Williams, and Withers.

So the amendment was not agreed to.

The question recurring on agreeing to the amendment proposed by Mr. Hoar, Strike out all of said resolution, and in lieu thereof insert the following:

"Whereas on the 25th day of October, 1877, the Senate unanimously adopted following resolution:

"'*Resolved*, That the Committee on Privileges and Elections on the contested cas William Pitt Kellogg and Henry M. Spofford, claiming seats as Senators from the S of Louisiana, and whose credentials have been referred to such committee, be author to send for persons and papers, and administer oaths, with a view of enabling said c mittee to determine and report upon the title, respectively, on the merits, of each of contestants to a seat in the Senate;'

"And whereas on the 26th day of November, 1877, said committee reported the lowing resolutions:

"'*Resolved*, That William Pitt Kellogg is, upon the merits of the case, entitled

seat in the Senate of the United States from the State of Louisiana for the term of six years commencing on the 4th of March, 1877, and that he be admitted thereto upon taking the proper oath;

"'*Resolved*, That Henry M. Spofford is not entitled to a seat in the Senate of the United States;'

"And on the 30th day of November, 1877, the Senate adopted said resolutions; and thereafter, on the same day, said Kellogg was duly admitted to take the oath, and took his seat as a Senator from said State for said term: Therefore,

"*Resolved*, That said proceedings are final and conclusive upon the right of said Kellogg and the claim of said Spofford to such seat for said term,"

It was determined in the negative—yeas 17, nays 26.

On motion by Mr. Hoar, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Bell, Bruce, Cameron of Wisconsin, Dawes, Edmunds, Ferry, Hill of Colorado, Hoar, Ingalls, Logan, McMillan, Morrill, Platt, Rollins, Saunders, and Windom.

Those who voted in the negative are Messrs. Bailey, Call, Coke, Davis of West Virginia, Garland, Groome, Hampton, Harris, Hill of Georgia, Houston, Jonas, Jones of Florida, Kernan, Lamar, Maxey, Morgan, Pendleton, Randolph, Ransom, Saulsbury, Slater, Vance, Vest, Voorhees, Walker, and Williams.

So the amendment was not agreed to.

On the question to agree to the resolution as amended, it was determined in the affirmative—yeas 26, nays 17.

On motion by Mr. Edmunds, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bailey, Call, Coke, Davis of West Virginia, Garland, Groome, Hampton, Harris, Hill of Georgia, Houston, Jonas, Jones of Florida, Kernan, Lamar, Maxey, Morgan, Pendleton, Randolph, Ransom, Saulsbury, Slater, Vance, Vest, Voorhees, Walker, and Williams.

Those who voted in the negative are Messrs. Allison, Bell, Bruce, Cameron of Wisconsin, Dawes, Edmunds, Ferry, Hill of Colorado, Hoar, Ingalls, Logan, McMillan, Morrill, Platt, Rollins, Saunders, and Windom.

So the resolution as amended was agreed to, and is as follows:

"*Resolved*, That the Committee on Privileges and Elections, to which was referred the memorial of Henry M. Spofford, praying permission to produce evidence relating to the right of Hon. William Pitt Kellogg to the seat in the Senate held by him from the State of Louisiana, and in support of the claim of said petitioner thereto, be, and said committee is hereby, instructed to inquire into the matters alleged in said petition; and for that purpose said committee is authorized and empowered to send for persons and papers, administer oaths, and do all such other acts as are necessary and proper for a full and fair investigation in the premises. Said committee may, in its discretion, appoint a subcommittee of its own members to make such investigation in whole or in part; which subcommittee shall have authority to employ a clerk, stenographer, and sergeant-at-arms, and shall have all the powers of the general committee to administer oaths and send for persons and papers, and may make such investigation either in Washington or in the State of Louisiana, and said committee or its subcommittee may sit in vacation; and said committee are further instructed to inquire and report whether bribery or other corrupt or unlawful means were resorted to to secure the alleged election of the memorialist."

[The debate is found on pages 1099–1123 of the Congressional Record, vol. ix, part 1.]

SATURDAY, *June* 21, 1879.

Mr. Hill, of Georgia, from the Committee on Privileges and Elections, reported the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Committee on Privileges and Elections, or a subcommittee of the same, be, and are hereby, authorized to sit during the recess of the Senate for the purpose of continuing the investigation in the Spofford-Kellogg contest."

[Second session of the Forty-sixth Congress.]

MONDAY, *February* 9, 1880.

The Vice-President laid before the Senate a resolution* of the legislature of Louisiana relative to the election of William Pitt Kellogg to the Senate of the United States from that State; which was referred to the Committee on Privileges and Elections, and ordered to be printed.

* Found in Senate Miscellaneous, 46th Cong., 2d sess., vol. 1, No. 37.

THURSDAY, *February* 12, 1880.

The Vice-President laid before the Senate the memorial of Republican members of the legislature of Louisiana, relative to the election of William Pitt Kellogg to the Senate of the United States from that State; which was referred to the Committee on Privileges and Elections, and ordered to be printed.

[A copy of the memorial is found on pages 833–835 of the Congressional Record, vol. x, part 1.]

TUESDAY, *February* 17, 1880.

Mr. Jonas presented a memorial of the Union Soldiers' Association of New Orleans, La., relative to the election of William Pitt Kellogg to the Senate of the United States, praying that his right to a seat therein be declared null and void; which was referred to the Committee on Privileges and Elections.

MONDAY, *March* 22, 1880.

Mr. Hill, of Georgia, from the Committee on Privileges and Elections, to whom was referred the memorial of Henry M. Spofford, claiming to be entitled to a seat in the Senate as a Senator from the State of Louisiana, submitted a report (No. 338) thereon, accompanied by the following resolutions for consideration; which were ordered to be printed:

"1. *Resolved*, That, according to the evidence now known to the Senate, William P. Kellogg was not chosen by the legislature of Louisiana to the seat in the Senate for the term beginning on the 4th day of March, 1877, and is not entitled to sit in the same.

"2. *Resolved*, That Henry M. Spofford was chosen by the legislature of Louisiana to the seat in the Senate for the term beginning on the 4th of March, 1877, and that he be admitted to the same on taking the oath prescribed by law."

Mr. Hoar asked and obtained leave to submit the views of a minority of the Committee on Privileges and Elections on the foregoing subject; which were ordered to be printed, to accompany the report No. 388.

On motion by Mr. Hill, of Georgia, that the testimony taken by the Committee on Privileges and Elections in the investigation of the claim of Henry M. Spofford to a seat in the Senate be printed,

After debate, it was determined in the affirmative.

[The debate is found on pages 1758–1768 of the Congressional Record, vol. x, part 2.]

REPORT OF COMMITTEE.*

[The committee consisted of Messrs. Saulsbury (chairman), Hill of Georgia, Kernan Bailey, Pryor, Vance, Cameron of Wisconsin, Hoar, and Logan.]

IN THE SENATE OF THE UNITED STATES.

MARCH 22, 1880.—Ordered to be printed.

Mr. Hill, of Georgia, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom was referred the memorial of Henry M. Spofford, claiming to be entitled to the seat in the Senate from the State of Louisiana now occupied by William P. Kellogg, ask leave to submit the following report:

On the 7th day of November, 1876, an election was held in the State of Louisiana for a governor and members of the legislature. In March, 1877, William P. Kellogg presented credentials signed by Stephen B. Packard, claiming to be governor, and certifying that said Kellogg had been duly elected to the seat in the Senate for the term beginning on the 4th of March, 1877, by the legislature chosen at said election. In October, 1877, Henry M. Spofford presented credentials, signed by Francis T. Nicholls, claiming to be governor, and certifying that said Spofford had been duly elected to the same seat by the legislature chosen at said election. These several credentials were referred by the Senate to the Committee on Privileges and Elections. On the 26th of November, 1877, a majority of the committee reported that the committee had investigated the issue, and that Kellogg, on the merits, was entitled to the seat. A minority of the committee reported that the committee had not fully investigated the issue, but had refused to do so, and asked that the credentials of both contestants be recommitted, with instructions to complete the investigation. The Senate refused to recommit, adopted the majority report, and Kellogg was admitted to the seat on the 28th of November, 1877.

* Taken from Senate Reports 46th Cong., 2d sess., vol. 4, No. 388. The accompanying testimony is here omitted.

On the 21st day of March, 1879, Henry M. Spofford presented his memorial to the Senate, complaining that he was denied the privilege of producing important testimony on the former hearing, alleging that much evidence of bribery and corruption by said Kellogg in procuring his pretended election had been since discovered, and asking that the case "be re-examined, to the end that justice may be done."

This memorial was referred to this committee, and the Senate, subsequently to that reference, ordered and authorized the committee to take testimony by the whole committee or by subcommittee, with full power to send for persons and papers, and to do all things necessary and usual in such cases.

The committee have faithfully executed this order of the Senate.

The memorialist and the sitting member appeared before the committee in person and by counsel. On the 5th of June, 1879, the full committee commenced the examination of witnesses in this city. The examination was continued in November and December by a subcommittee in the city of New Orleans, and was again resumed by the full committee in this city, and was continued until both parties announced they had no further testimony to offer. Nearly one hundred and fifty witnesses have been examined, and over 1,200 printed pages of testimony have been taken and are herewith reported to the Senate, with the conclusions of law and fact at which the committee have arrived.

In the opinion of your committee, the evidence, now for the first time fully taken, clearly and abundantly establishes the following facts:

I. That said William Pitt Kellogg, then holding the office of governor of the State of Louisiana, and pending the canvass in said election of 1876, did conspire with divers persons, and in aid of such conspiracy did fraudulently use the influence and power of his office of governor, to prevent a fair, free, and legal election in said State, to the end that he might procure from the commissioners of election the return of a legislature a majority of whose members should be of the Republican party and presumed to be favorable to his election to the Senate.

II. That, having failed in this, the said William Pitt Kellogg, still holding the office of governor, did conspire with divers persons, and in aid of such conspiracy did fraudulently use the influence and power of his office of governor, to change the result as returned by the commissioners of election, to the end that he might procure, through false certificates of election, the organization of a pretended legislature a majority of whose members should be of the Republican party, and supposed to be favorable to his election to the Senate.

III. That said William Pitt Kellogg did conspire with divers others to prevent, and by force, through the metropolitan police, aided by the Army of the United States, did prevent the lawfully elected members of the legislature, and especially those of the Democratic party, from assembling in the halls of the senate and house of representatives in the State-house of the said State of Louisiana; and did, by threats, by the use of money, by the promise of offices, and by other corrupt practices, compel and induce to assemble in said halls, respectively, a mob of his co-conspirators, against the will of the people of Louisiana, many of whom had not been elected, and some of whom had been neither elected nor certified, to the end that he might procure a pretended legislature for the inauguration of Stephen B. Packard as governor, who, he well knew, had not been elected, and from which mob he might procure the form of his own election to the Senate, and which pretended election he knew such pretended governor would certify.

IV. That said William Pitt Kellogg having thus corruptly procured the assembling of a body of persons pretending to be a legislature, in which were included persons not elected, and from which had been forcibly excluded persons who had been elected and certified as members, did, by bribery, by the use of money and the promise of offices, and by other corrupt practices, induce said body of persons to go through the form of choosing him to a seat in the Senate of the United States.

V. That said William Pitt Kellogg, well knowing that the facts now proven to exist did exist, did falsely represent that no such facts existed or could be proven, seeking thereby to induce a majority of the committee, without taking the evidence which has now been taken, to make a report declaring his title to the seat, and with intent to induce a majority of the Senate to admit him to the seat so fraudulently claimed.

VI. That, to prevent the discovery of the briberies, frauds, and corruptions now proven to exist, the said William Pitt Kellogg did procure a large number of the persons composing said pretended legislature to be appointed to public offices of profit in the custom-house at New Orleans and elsewhere, as inducement not to disclose the truth. That, after other persons, officers and members of said pretended legislature had freely and voluntarily admitted, under oath, their knowledge of said briberies and corruptions, and had been summoned to appear as witnesses before your committee, and were under the protection of the Senate, said William Pitt Kellogg did, by bribery and corrupt practices, induce such witnesses to testify falsely that they had not made such admissions, or that, if they had made them, they were not true.

The committee realize the severity of these conclusions, but they are more than justified by the evidence. In view of their severe character, however, the committee are unwilling to confine this report to a simple announcement of their findings, but will incorporate in the report itself a portion of the abundant evidence which establishes their correctness.

As illustrative of the evidence in support of the first conclusion before stated, your committee will here refer to the following facts:

1. In 1876 F. J. Stokes was parish judge of Grant Parish, appointed by Kellogg. One Ward was the supervisor of registration for said parish, also appointed by Kellogg. Before the registration was completed Ward hid his books, and came to New Orleans and represented to Kellogg that he "was bulldozed and driven from the parish." Kellogg asked Stokes how the parish was. Stokes replied that "whenever the people of the parish was voting the Democrats carried the parish." Kellogg said, "If the people there don't want an election, we will throw the parish out."

Stokes testified most positively that the bulldozing pretext was false, and that the whole thing was fixed up to throw the parish out because it was Democratic. He says "there was no bulldozing there at all."

In answer to the direct question, "Was there any real danger to him (Ward) in staying there (in the parish)?" Stokes said, "Not a solitary particle. There was no danger to any man in the parish if he staid there and behaved himself. They treated him (Ward) very quietly and nicely as long as he staid in the hill country, and they paid his bills up there in the hill country." The hill country was the strong Democratic portion of the parish.

Evidently to make a case of apparent fairness for the sitting member, Jewett testified that "Kellogg handed him a letter directing Ward to return to the parish." This letter he gave to Ward "about the 1st of November." In reply to this Judge Stokes testified that "he (Ward) never started back. It was no calculation to have him start. In the first place, to have started on the 1st of November, he could not have gotten there. He told Kellogg at the time that the only way to the mouth of Red River was to take a stage." "He (Ward) actually did not go back." One fact puts the truth of this evidence of Stokes beyond possible doubt. Ward was allowed to remain in New Orleans until after the time for completing the registration under the law had expired, and then the pretended order to return was given him.

Thus defrauded, the people of the parish held an election without registration, and the Democrats carried the parish, but it "was thrown out."

2. By the election laws of Louisiana the registration of voters was required to be completed nine days before the election. The law also required that when the registration was closed the books of registration from the several parishes should be sent to the chief registrar's office in New Orleans.

In this election of 1876, the books of registration, at least of the several wards in the city of New Orleans, were sent to the custom-house instead of to the office of the chief registrar. Peter Williams was the chief clerk and acting registrar of voters in 1876. Without his knowledge or consent, an order by telegraph was sent out to the supervisors of registration in his name, ordering the books to be sent to the custom-house. To this order the name of Williams was forged by Blanchard, Kellogg's clerk. Williams adds:

"In the morning, when I came to the office I expected to find the books there, but I did not, and I went down then to the custom-house and found the books there, and found them erasing names from them.

"Question. Who were erasing the names?—Answer. The supervisors and their clerks.

"Q. That was at the custom-house?—A. At the custom-house, sir."

There is no denial by any one of this bold and shameless fraud and forgery. It is shown by various witnesses that the "supervisors and their clerks" were erasing names from these registration books during the night, and that a large number was erased, chiefly of Democrats. One of the Republican candidates for the legislature from the seventh ward of New Orleans (Moore) himself struck off "a large number of registered Democratic voters."

As illustrative of the evidence which shows the correctness of the second conclusion announced above, the following facts are cited:

1. Henry Houser was a member of the metropolitan police force, and was stationed as the night watch at Governor Kellogg's house A few days after the election he saw Blanchard, Jewett, Anderson, and Packard frequently at Kellogg's house at night. They often entered from the rear way. Witness frequently saw Blanchard and Jewett writing in one of the rooms upstairs. They would come about 7 or 8 o'clock, and remain from 11 to 12. They had papers which looked like election papers. He heard Kellogg concede that the election for the house of representatives had gone Democratic, and Blanchard told witness they were working on the election returns, and his understanding

from them was that they were seeking, by throwing out parishes and working on the returns to change the result, and make it Republican. They were thus engaged until after Packard's inauguration. This witness is strongly corroborated in several particulars, not only by conceded facts, but also by the witnesses called to rebut his testimony.

2. There can now be no reasonable doubt that the scheme to reverse the verdict of the ballot-box was hatched at these clandestine night meetings at Kellogg's own house, and the plan for carrying out the scheme under the false pretexts of violence and intimidation was here begun by those conspirators, of whom Kellogg was the chief. The frauds resorted to to change the result of the election in the seventh ward of New Orleans are now for the first time fully disclosed. This result, changing 3 votes from the Democrats to the Republicans in the house, must be added to the many heretofore known and admitted.

"The returns from the parishes showed that Nicholls, the Democratic candidate for governor, had a majority over Packard, the Republican candidate for the same office, of 8,010 votes. By the exercise of the unlawful powers already pointed out, and by the frauds now proven, this majority was changed to a majority in favor of Packard of 3,426 votes.

"The evidence shows, and it is admitted by Mr. Kellogg, that Perkins, Democrat, had a majority for senator in the twelfth senatorial district; he beat Weber, Republican, largely, but the returning board gave the latter a certificate of election. Meredith, Democrat, had a majority over Hamlet, Republican, for the senate for the eighteenth senatorial district; the returning board gave Hamlet the certificate. Sandiford, Democrat, beat Blunt, Republican, for the senate in the twenty-second senatorial district; the returning board gave Blunt the certificate.

"In Ouachita Parish Breard and Taylor, Democrats, beat Barrington and Brewster, Republicans, for the house of representatives, as the parish returns show; but the returning board gave the Republicans certificates of election. In East Baton Rouge Parish Dupré, Williams, and Young, Democrats, beat Bird, Holt, and Lane, Republicans, for the house of representatives; the returning board gave the certificates of election to the Republicans. In La Fayette Parish Marshall T. Martin, Democrat, beat Fernest Martin, Republican (these were brothers), for the house of representatives; the Republican received the certificate of election.

"In West Feliciana Parish McGee and Ryland, Democrats, beat Swazie and Early, Republicans, for the house of representatives. The Republicans, however, received certificates of election. In Morehouse Parish Washburn and Hammond, Democrats, beat Shelton and Blair, Republicans, for the house of representatives, but the certificates of election were given to the Republicans. In De Soto Parish Pitts and Means, Democrats, beat Long and Johnson, Republicans; the latter received certificates of election. The returning board refused to count any returns from the parishes of Grant and East Feliciana; the returns were thrown out absolutely. The parish returns show that Lyons and Porter, Democrats, were elected from East Feliciana, and Randolph, Democrat, was elected from Grant Parish.

"The parish returns show that the Democrats were elected in each instance above mentioned, and Mr. Kellogg admits that they received majorities." (See his statement made to the committee on 13th of November, 1877.)

Of the eighty-three persons who were said to be in the joint convention which elected Kellogg, nineteen are positively shown not to have been elected, but were fraudulently given certificates. Seventy-nine were necessary to make a quorum. The "work on the election returns" at Kellogg's house was evidently effective, and bore fruit through the returning board, one and sometimes two of whose members attended these clandestine night meetings.

Mr. Steven, a member of the Nicholls senate, was seized and held by force, and was counted as present against his protest, to enable this Packard senate to go through the farce of a contest, and to seat two outsiders named Baker and Kelso, who were not elected by the people.

The evidence in support of the third conclusion is furnished by the witnesses of both contestants. It is easy to understand that such a body of men so fraudulently assembled could not be kept together by a sense of duty or other legitimate means. Accordingly the State-house, which they seized, and in which they were gathered, was barricaded and surrounded with troops, and the members were kept in their halls day and night. Orders were given by the pretended officers of the legislature, and especially on the day of election, to keep members present by force. Some who were absent in spite of these precautions were fraudulently personated as present, and others were allowed to record their votes the next day. But many of the members were impecunious. "They needed money to meet their necessities, they had to live, and wanted to be helped from time to time as their money gave out." Louis J. Souer, who figures prominently in all these frauds in behalf of Kellogg, and who was a member of the lower house, advanced "out

of his own money" about $3,000, much of which he admits was never returned. John A. Walsh and other accommodating witnesses and friends of Kellogg also advanced money. These advances were called loans, made on warrants or vouchers. It is impossible to mistake the meaning of such testimony. What Souer calls loans are spoken of by other witnesses very differently, who say these advances were bribes, but they were to be called loans if any question should arise about their character. The testimony given by the witnesses introduced by Kellogg himself is overwhelmingly convincing that force, fraud, and bribery were all needed to keep this motley crowd of conspirators against the people of Louisiana in their barricaded den of iniquity.

In support of the fourth conclusion the evidence is equally convincing, for after all these frauds to cheat the voters, to change the returns, and to force an assemblage, Kellogg was in danger of losing the prize. Warmoth testifies: "There was a bitter fight for the Senatorship, not so much on my part, although I was spoken of, but between Kellogg and Pinchback." The witness himself "was a dark horse," thinking, may be, neither could be elected, and the honors would fall on him. "My eyes," he adds, "were not altogether blind to that contingency." Even after Kellogg was nominated he thought it was absolutely necessary for him to get all the votes in order to be admitted to the seat.

Thus, both to secure the nomination and the election, the field for bribery and other corrupt practices was enlarged. Kellogg now added threats also. He declared if he was not elected he would disband the concern and turn them all over to the Nicholls government.

Quite a number of witnesses have testified directly and positively that they saw Kellogg pay money to different members to vote for him for Senator.

A large number are shown to have admitted that they received money for voting for Kellogg, and many of these admissions were made under oaths and taken voluntarily and without inducement.

The evidence establishing direct bribery with money of a large number of the members is simply crushing. If a tithe of this evidence is credible there can be no escape from the conclusion that Kellogg secured his election by direct and unblushing bribery. Offices under the Federal administration were also promised to secure the same result, and how faithfully these promises were fulfilled is unmistakably disclosed in the evidence.

The evidence referred to in support of the four first conclusions before announced can leave no doubt in any rational mind of the correctness of the fifth conclusion as to the reasons which urged the sitting member so earnestly to oppose a full investigation on the former hearing of this case. If such investigation had been made, as it was once ordered by the Senate and resolved by the committee, and the evidence now before us had been taken, it would be doing violence to all possible respect for the United States Senate to suppose the sitting member could have been declared entitled "on the merits" to take a seat in this body. It was indispensably necessary to conceal the facts to discover any merit in his title.

In support of the sixth conclusion the evidence is, if possible, still more convincing. On the 5th day of May last the Senate directed this committee to investigate the charges made by the memorialist. It is significant that this order was adopted by the Senate only after the most earnest and persistent opposition from the sitting member himself.

The passage of this order by the Senate to take testimony dates the beginning of efforts by the sitting member and his assistants to suppress evidence, which your committee believe were never exceeded in energy and varied devices.

The following special dispatches from Washington City appeared in the Times newspaper of New Orleans on the 13th and 16th days of May, respectively:

WASHINGTON, *May* 12, 1879.

In view of the interest the leading Republicans and the Administration take in the result of the contest for Kellogg's seat, it is certain that any Republican who can be shown to have worked against him at home will stand a slim chance of any recognition from Hayes or the next administration if it be Republican. Kellogg is playing his hand for all its worth, and don't intend to have any fire in the rear if he can help it.

W. H. R.

WASHINGTON, *May* 15, 1879.

Everything is not lovely in Republican circles in Louisiana; in fact, quite the reverse. There are said to be some people in the party who are not helping the Hon. William P. Kellogg as they ought, and one of them holds a high position in the custom-house.

The party and the President are both rallying to the assistance of the Hon. W. P. Kellogg with some solidity, and the Republican in Louisiana who refuses to actively aid

this contest may make up his mind to go to the rear if Kellogg wins or the next administration is Republican.

The Hon. John Sherman and Attorney-General Devens have signified their willingness to aid Kellogg in this contest all they can, and some of the custom-house rolls are very likely to be revised pretty soon.

W. H. R.

There can be no doubt as to the intent of this notice, and the evidence discloses with striking clearness the effect. It should be remembered in this connection that the frauds which were to be investigated could only, in their nature, be proven by those who were either members or officers of the pretended Packard legislature, and by those who were permitted to have free access to it, and by others who were in Kellogg's confidence at the time the frauds were committed. All others were excluded by bayonets from this barricaded mock legislature, thus conspiring to defraud the people its members pretended to represent. They were plainly notified of the consequences which they must expect, both from this Administration and the next, who would dare reveal what they knew of these frauds, or who failed actively to prevent such revelation.

The rewards were as unstinted as the threats were positive. The examination by this committee began the 5th of June. During this month of June there were thirty-nine of the members of this Packard mob of Kellogg conspirators holding Federal offices, nearly all in the custom-house at New Orleans, which constituted about one-half the number claimed to be present at the time of Kellogg's election. Thirty-nine so employed appear by the testimony before your committee. Other statements have been made to the public increasing the number of said Packard legislators so employed to fifty-six. The object of these appointments is not left by the evidence to conjecture. The evidence is direct, positive, unimpeached, and undisputed that the object was to prevent revelations against Kellogg.

H. T. Brown testified that Morris Marks (revenue collector, and who was one of Kellogg's most active supporters) said to witness in June or July, "I cannot take care of any of my friends now while this fight is going on about Kellogg. I have to appoint a set of G—d d—d curs and hounds to keep them from squealing on Kellogg." Morris Marks was present during the investigation by the subcommittee in New Orleans; was actively at work for Kellogg; was himself a witness in behalf of Kellogg; and did not deny this statement of Mr. Brown.

Similar statements and allusions frequently occur in the evidence, and they are overwhelmingly corroborated by many facts. Witnesses were appointed to offices immediately before they were to testify, and were also appointed promptly after they had testified satisfactorily to Kellogg. Witnesses who were clearly convicted of perjury and false swearing before this committee were appointed to places, plainly as rewards for such perjury and false swearing. Witnesses who were proven to have made admissions that they knew Kellogg was not elected, or that his election was corrupt, and threatened to reveal what they knew if they were not given offices, promptly received the offices and as promptly testified that Kellogg was elected, and by the fairest means possible!

The instances of this use of the public offices to hush witnesses, to procure witnesses, and to reward witnesses are as numerous as they are disgraceful. Your committee do not believe such shameful civil service degradation can be found in the annals of any civilized people. It is pregnant evidence of all the charges of fraud and corruption against the sitting member. It cannot be supposed that such means were employed to maintain a title which was good "on the merits." It cannot be doubted that such means were employed only to maintain a title which was secured by fraud, and which could only be retained by perjury. Your committee are not authorized to say and will not say that the President and certain of his Cabinet were willing parties to this corrupt use of the public offices; but they feel constrained to say that if they had been willing parties they could not have been more accommodating and compliant to the sitting member.

The evidence clearly reveals another very striking and unusual method of using the public offices. Those who held the offices were not only themselves faithful to their chief and his title "on the merits" in their own testimony, but they were active and vigilant to make others so. They ceased not to travel and labor in behalf of the sitting member to the utter neglect of their public duties, and without any cessation of their pay from the public treasury.

Several members and officers of the body which pretended to elect Kellogg admitted, as the evidence shows, voluntarily, that there was no quorum present, that absent members were falsely personated, that the roll as made up was false, and that Kellogg had used bribery and corrupt means to secure his election. The memorialist, knowing the character of all these people who were parties to this enormous fraud, resorted to the natural precaution to have their statements reduced to writing and sworn to before venturing to summon them as witnesses. That such affidavits had been made, and that a number of those who made them had been or would be summoned to Washington as

witnesses in behalf of the memorialist, became known to the sitting member's vigila sentinels in the custom-house. One employé of the custom-house came on to Washin ton in advance of the witnesses, among other things "to arrange with Kellogg" for ce tain of the witnesses. A notorious detective also came on in advance and registered this city under an assumed name. This detective testified that he was sent by an offic in the custom-house to watch the counsel of the memorialist and to aid Kellogg. Yo committee do not rely on the character of this witness to establish his credit. His ve service for Kellogg was discrediting. Like most of the witnesses in this case, he is on entitled to credit as his statements are corroborated, and many of his statements are mo strikingly corroborated, and much that he said is shown by others to be true. The offic in the custom-house who is charged to have employed this detective was known to l very influential with the witnesses. He took the same train with the witnesses on the departure from New Orleans for this city. He traveled with them the entire distanc he exhorted the witnesses on the way to stand by their party; he telegraphed notice Kellogg of the time they would arrive in Washington, and he remained with them, a with them, and slept with them until the examination here closed. It is shown, to that from the time this investigation was ordered by the Senate until its close in this ci an active telegraphic correspondence was going on between the sitting member and h assistants here and the collector of customs himself in New Orleans. The telegrams a in cipher, and are herewith reported to the Senate. They most clearly relate to the w nesses, and are pregnant with all the *indicia* of fraud, collusion, and corruption.

The witnesses arrived in Washington about 10 o'clock p. m. on the 4th of June, a their examination by this committee was to commence the next morning. Whatev arrangements, therefore, were necessary to be made with or ratified by the sitting me ber to induce them to deny the affidavits they had made in New Orleans had to be co pleted during that night and before the meeting of this committee the ensuing mornin Accordingly the employés of the custom-house and the detective who came in advan from New Orleans and several others already in Washington in the Government's emplo and Kellogg's service met the witnesses at the depot on their arrival. The detective swea that five of the witnesses were conducted by him, under previous arrangement, to Kel logg's office after midnight. He says the witnesses were afraid of prosecution if the denied their sworn statements made in New Orleans, and that to relieve this fear som law was read to them to the effect that they could not be indicted for such denial. Bein satisfied on this point, the witnesses were willing to contract, and the detective says di receive and accept from Kellogg money and promises of offices during his Senatorial term, and in consideration thereof did pledge themselves to disappoint the memorialist, who had called them as witnesses on the faith of their sworn statements, and to testify in all respects in favor of the sitting member. Thomas Murray did not attend this night conclave. He only of the witnesses was faithful to his statement made in New Orleans. He refused to accept the bribes offered him to do so. He and the detective both testified that such bribes were repeatedly urged upon him in increasing amounts. Refusing persistently to accept all offers to testify falsely, he was then offered money not to testify at all. He was urged to disobey the summons of this committee and escape into Canada, where he was to be well maintained until the investigation was closed, and he should receive a telegram in the words, "The Union forever," by which he was to understand he could safely return. All these offers he refused, and did appear and testify, under the frowns of his comrades, to the truth of his previous statements.

Another witness, Milton Jones, accepted the bribe but hesitated to commit the perjury. In his stress he begged the counsel of the memorialist not to require him to testify, because he would be compelled to swear falsely under the influence of "big money." Because of this earnest appeal he was not sworn by the memorialist. This witness was asked by Kellogg, through his faithful detective, to return the money, the price of the perjury he had thus avoided committing, but he refused to return it. Subsequently he was called by the sitting member before the subcommittee in New Orleans and made to execute his criminal bargain. Other devices were employed by the sitting member to suppress truth and establish falsehood. Those who refused to swear falsely were assailed as untrue to their party and social ostracism itself was visited upon them. Schemes were contrived to entrap them into inconsistent admissions. Witnesses who admitted they thought it legitimate to make and to swear to false statements were called to impeach the credibility of those who refused to imitate their example. Detectives were actively engaged under friendly professions in efforts to involve the memorialist in like briberies and frauds with those so abundantly proven upon the sitting member, all of which your committee cheerfully report not only failed but recoiled heavily on the sitting member. Witnesses were diligently trained to believe that the ejection of Kellogg from the Senate would be the defeat of the Republican party in the nation and in Louisiana; that such defeat would render it impossible for any Republican to live in the State, and that perjury was a virtue when committed for the success of the Republican

party. All these facts and very many more of like kind will be found in the testimony herewith reported to the Senate.

That such is the testimony was not denied before your committee either by the sitting member or his able counsel. Indeed, it could not be denied without denying the plain language of very many witnesses. But it was earnestly insisted before your committee by both the sitting member and his counsel that this testimony would not justify the conclusion that the sitting member was not entitled to the seat in the Senate for two reasons, and first because they alleged the witnesses ought not to be believed.

Two grounds are urged for disbelieving the witnesses: (1) because they were contradicted, and (2) because they were impeached as not entitled to credit on account of bad character.

The contradictions were almost exclusively by witnesses who were parties to the crimes proven. To illustrate: If a witness testified positively that he saw money paid to a member for his vote, the implicated member was called to contradict this by testifying he did not receive money for his vote. Under this rule few criminals would be found guilty. It frequently happened, too, that the implicated member had previously and frequently admitted, and often under oath, that he did receive money for his vote. So he contradicted himself as well as the witnesses. It will be seen from the evidence, too, that these contradicting witnesses had often been provided with offices or other consideration after they made the admissions they were called to contradict, and others were promptly appointed to offices in the ever-accommodating custom-house after they had faithfully made the contradictions.

Your committee attach little if any weight to such contradictions. In our view they are often strongly confirmatory of the witnesses-in-chief.

Besides many of the material frauds proven are not disputed at all, and some are even admitted, because they were of a character which did not admit of contradiction. This is especially true of the frauds resorted to to prevent a fair election by the people; to change the result as returned by the commissioners of election, and the force and frauds employed to assemble and keep together the pretended Packard legislature.

Let us then proceed to consider the allegation that the testimony should not be believed because the witnesses were impeached on account of general bad character.

Some few of the witnesses were not so impeached at all, and why they were not impeached your committee do not understand, since the impeaching resources of the sitting member seemed to be exhaustless. As it is, however, the testimony which is unimpeached and uncontradicted is ample not only to justify but to require the adoption of the resolution herewith submitted. But your committee do not find it necessary to rest their conclusions solely on this unimpeached and uncontradicted evidence.

We admit that a great number of the witnesses called on both sides were of very bad character, not only for truth, but for every other virtue, and if their credibility depended solely upon character they ought not to be believed. But the rules of law furnish safe guides in weighing this evidence.

The accomplice of a criminal is necessarily of bad character, for he is a criminal himself. If he is not to be believed because he is an accomplice, and therefore of bad character, then an accomplice in no case ought to be allowed to testify. But in spite of bad character they are often the only accessible witnesses, and their evidence is often most satisfactory. Were it otherwise, those criminals would often be safest whose crimes were greatest.

In the case before us nearly all the witnesses examined were the accomplices of Kellogg in the crimes and frauds which resulted in his pretended election to the Senate. They were all conspirators against the people of Louisiana. The very fact that they were associates and accomplices in this conspiracy furnished the most conclusive proof of bad character. No other proof was needed to establish such bad character. The conspirators were surrounded with troops by order of their chief, Kellogg himself, by his power as governor, and the Army was employed to protect them day and night from intrusion by people worthy of credit by reason of good character. Being faithless in their very assembling to all good people, the chief chance of redress for good people was in the natural hope they would become faithless to each other, and reveal the frauds, briberies, and corruptions which cemented them for evil. Their revelations appear in the evidence, and your committee do not doubt would far more abundantly appear if the Federal Administration would withdraw the patronage which has purchased the silence and perjury of so many of the gang.

All the facts and circumstances of corroboration required by the rules of evidence to accompany the testimony of accomplices abundantly and most remarkably sustain the witnesses who testified to the frauds, briberies, and corrupt practices upon which we have based our conclusions, and the impeaching witnesses are themselves most strikingly discredited by such facts and circumstances. Indeed, your committee do not hesitate to affirm that much of the evidence must be believed, because the corroborations which accompany and surround it make it impossible that it can be false.

The sitting member insisted upon conducting much of the examination in his own behalf, and this privilege was accorded him. In the style of his questions and the conduct of his cause he often exhibited most striking corroboration of the witnesses who were testifying of his guilt. The corroborations brought out by himself not only occurred in his cross-examinations of the witnesses called by the memorialist, but also in his examinations of witnesses called by himself to impeach or contradict the witnesses of the memorialist.

Your committee are unable to see how an impartial legal mind can read the evidence taken and doubt the guilt of the sitting member upon every charge which has been made against him, notwithstanding so many of the witnesses must be admitted to be disreputable.

But the sitting member, through his very able counsel, also insisted, with great earnestness and skill before your committee, that the Senate at a former session having, "after and upon evidence going to the merits of the case," declared that Kellogg was "upon the merits of the case entitled to the seat," this decision is final and conclusive, and cannot now be re-examined and reversed. This was the first and chief position on which the title of the sitting member was made to rest. Your committee have fully considered the question thus presented, and cannot doubt the correctness of the conclusions at which they have arrived.

Stated in the light of the facts now known and herewith reported to the Senate, this position would read thus: That though the sitting member was not, in fact, chosen by the legislature of Louisiana; and though the body of men alleged to have elected him was assembled through fraud, was held together by force, and was controlled by bribery and corruption, and all this was accomplished by a conspiracy to defraud the State and people of Louisiana, of which conspiracy the sitting member was himself the chief, yet, the Senate having decided in ignorance and by the suppression of these facts that the sitting member was entitled on the merits to the seat, the Senate is compelled to allow him to retain the seat after full knowledge that every fact which was assumed to exist when he was admitted is and was false and untrue. The reply to such a position is sufficiently furnished in the statement of the position itself. But your committee will not rest the argument here, and will consider it in the light of precedent and law. Counsel for the sitting member says:

"If, therefore, this committee and the Senate shall set aside this judgment on the merits, it will present to the country and the world a spectacle not seen before in the century of our national existence just closed."

We might justly reply to this that this case, in the facts now proven, already presents to the country and the world a spectacle not before seen in this century or any previous century of this or any other nation. We trust such a spectacle will never again be presented, and that it may not be it ought to be now condemned by all men and especially by this Senate. If it shall be understood that seats once procured in this body by any means however false and fraudulent which bad men may employ cannot be taken away, this Senate may soon be largely composed of members not chosen by the legislatures of the States. Successful frauds will displace the positive requisition of the Constitution in the elections of Senators. A case without precedent cannot be decided by precedent. Fraud has certainly become a powerful agent in our politics, but we are not willing to admit it has yet become the supreme law above review and beyond remedy.

But while no case like this was ever before presented for decision, yet principles have been announced in other cases which will furnish some guide to a proper determination of this question.

In the case of Bright and Fitch, in the Thirty-fifth Congress, the rehearing asked was refused because "all the facts and questions of law involved were as fully known and presented to the Senate on the former hearing as they were then presented in the memorial of the legislature asking a rehearing." It was held that in such a case the judgment first rendered by the Senate "was final, and precluded further inquiry into the subject."

In the Butler and Corbin case, in the Forty-fifth Congress, the report of the minority of the Committee on Privileges and Elections correctly stated that no allegation was made "that testimony was before excluded which ought to have been admitted, or that testimony was admitted which ought to have been excluded; no request by either party to produce testimony had been denied, and no pretense that testimony then offered and excluded can now be produced. The jurisdiction is the same; the parties are the same; the subject-matter of contest is the same; the facts are the same, and the questions of law are the same." The report further said: "If, on the former hearing, Mr. Corbin had been denied the privilege of introducing material facts which he offered to produce; if he presented material facts now which were then unknown; if all the facts and questions of law now known and presented were not then as fully known and presented, the undersigned will not undertake to say his petition for a rehearing ought not, in justice

ıd right, to be gravely heard and considered on the mer.ts." The Senate adoped these ews, though it is a significant fact that a large and intelligent minority of the Senate ıted to unseat Mr. Butler and to admit Mr. Corbin, when not a single new fact or ques- ɔn of law had been presented or offered.

Your committee freely admit that a decision rendered on the merits ought not to be terwards reviewed and reversed on light or even doubtful grounds. In the courts the miliar rnle is that new evidence to authorize a reversal "ought to be material and ch as would probably produce a different result." In this case your committee are illing to apply a much stronger test, though there is no reason why a stronger should ; required. Let us adopt and apply the rule so strongly and forcibly expounded by a stinguished member of this Senate in the following language:

"The Senate would do manifest injustice were it hastily and without the most plain ıd most manifest reason to reverse a decision that had been made seating a Senator on is floor. The case must be extremely strong that would justify such a proceeding. ll that I am free to admit, but to say that the technical rule of *res adjudicata* that ap- ies to courts of justice applies in this chamber on a question of this kind is to confound l distinctions and to disregard all the laws of this body." (Congressional Record of ay 7, page 24.)

Let us now apply this rigid rule to the present case:

1. On the former hearing not a single witness was examined. Some admissions were ade by the parties, and some reports of investigations by Congressional committees ɔt on the issues involved in this contest "were agreed to be considered in evidence as r as they were pertinent." This was done only to narrow the field of investigation. On this hearing nearly one hundred and fifty witnesses have been examined, making 'er 1,200 printed pages of testimony of the most material and controlling character.

2. On the former hearing the memorialist begged and pleaded for the privilege of hav- g witnesses called and examined on five points not covered by the admissions and re- ɔrts above referred to, and by which witnesses he alleged he could prove, among other ıings, the direct personal complicity of the sitting member in glaring frauds in the pre- nded legislature which elected him. All these appeals were refused by the majority ' the committee, although an investigation had been previously ordered by the Senate ıd resolved upon by the committee, and the investigation was suddenly closed against ıe protest of the memorialist and a minority of the committee.

On the present hearing the witnesses have been examined, and the complicity of the tting member in the frauds alleged has been most convincingly established.

3. On the former hearing there was no evidence and no opportunity to produce evi- ence showing conspiracies, briberies, and other corruptions by the sitting member to ɔcure a fraudulent legislature, and to control the members thereof in his own election ı the Senate.

On the present hearing such conspiracies, briberies, and corruptions of the most start- ng, unblushing, and unparalleled character have been positively testified to by numerous itnesses, and these briberies and corruptions have been shown to extend to the witnesses ı the case in the very face of the Senate.

Your committee could multiply the features of contrast between the former and the resent hearing in this case, but we forbear. Under the most technical rule of *res adju- icata* there is not a court in civilized Christendom which would hesitate to review and ɔverse a judgment so utterly unauthorized and unjust; and surely it cannot be con- ɔnded that the Senate can have less power than a court to annul such a decision.

Conceding then, for the argument, that the Senate in passing upon contests for seats ı this body acts as a court, and that the technical rule of *res adjudicata* applies to de- sions rendered in such cases, do courts not re-examine, review, and reverse their decisions? re not appeals, writs of error, motions for new trials, and bills of review familiar to us ll? The Senate, in considering such cases in the first instance, is not bound by the ɔrms of proceedings in the courts. We have no declarations, no complaints, no bills in ıancery, nor pleas, demurrers, answers, and joinders of issue in the Senate. If the enate proceeds to original judgment without the pleading known to the courts, may ot the Senate also proceed to review, re-examine, and reverse such judgments when good ıuse is shown, without resorting to the processes which in such cases are known to the ɔurts? If the Senate is a court, then if the facts in a given case are such as would re- uire the vacation of a judgment if rendered by a court, surely the Senate would also e authorized to vacate such judgment. The exclusion by the court of material testi- ıony on the first hearing, the discovery of new and material evidence since the hearing, he existence of frauds, forgeries, briberies, and perjuries in procuring the first judgment re all well-known grounds on either one of which courts, by some of the methods of roceeding, will review and reverse such judgments. All these grounds are shown by he evidence and the records of this Senate to exist in extraordinary clearness, force, and epeated abundance in the case we are now considering. Is the Senate, by being likened o a court, to be bound by decisions which a court would rigorously vacate and annul?

But the attempt to apply to the Senate the technical rule of *res adjudicata* as it obtains in the courts is a palpable sophistry and not an argument. In the correct and forcible language of Senator Thurman, before quoted, "it confounds all distinctions and disregards all the rules of this body."

In cases where the contestants claim to represent the same State government, and the issue between them is one of informality or irregularity, or non-compliance with statutory provisions, there would be some show of reason for the application of this doctrine. In such cases there ought to be an end of litigation in the Senate as well as in the courts. A wise policy would certainly require in such cases the principle if not the rule of *res adjudicata*. It is to such cases the authorities cited by the eminent counsel for the sitting member were intended to apply.

But the questions involved in the present case rise immeasurably above such issues. They are not questions of regularity, but of authority. They are not questions of discretion, but of duty. They exist more between the State of Louisiana and this Senate than between the contestants. In their nature these questions are not merely judicial but political in the highest sense.

The Constitution says:

"The Senate of the United States shall be composed of two Senators from each State chosen by the legislature thereof."

Can a man sit as a member of this Senate who was not chosen by the legislature of his State? But suppose, in ignorance of the fact that he was not so chosen, the Senate is induced to declare him entitled to the seat "on the merits," after investigation; does such erroneous decision supplant the Constitution and give him a title after the mistake becomes known?

Let us suppose an impossible case: Suppose a majority of this Senate should for any purpose, partisan or otherwise, seat a man in this body who they knew was not chosen by the legislature of his State, would any future Senate be compelled to continue such person in the seat? Would not such continuance be as criminal as the original admission? Will any man pretend that a plain constitutional provision can be superseded by a mistaken decision of this Senate? If the sitting member was not chosen by the legislature of Louisiana, every hour he sits on this floor after that fact is known is a violation of the Constitution. It is a question of obedience to the Constitution. Can any person estop this Senate, can the Senate estop itself, from obeying the Constitution? Can the Senate estop itself from inquiring *totics quotics* whether he was chosen by the legislature? Can it be so estopped by its own erroneous decision on a former hearing?

In cases like the one now before us, your committee do not hesitate to adopt the language employed by those eminent constitutional lawyers, Mr. Collamer, of Vermont, and Mr. Trumbull, of Illinois, in the Fitch and Bright case in 1859. They said:

"The power of the Senate to judge of the election and qualification of its own members is unlimited and abiding. It is not exhausted in any particular case by once adjudicating the same, as the power of re-examination and correction of error and mistake, incident to all judicial tribunals and proceedings, remains with the Senate in this respect, as well to do justice to itself as to the States represented or to the persons claiming or holding seats. Such an abiding power must exist to purge the body from intruders, otherwise any one might retain his seat who had once wrongly procured a decision of the Senate in his favor by fraud or falsehood, or even by papers forged or fabricated."

In the light of the evidence now before the Senate the sitting member was admitted by a wrongly procured decision of the Senate in his favor by means quite as criminal as those stated in the last paragraph quoted, since the means employed by him to secure his pretended election included conspiracies, briberies, and perjuries often repeated, and the knowledge of which was vigorously suppressed on the former hearing. He was not chosen by the legislature of Louisiana. He was chosen by a body of men who conspired with him to defeat the will of the State, and who excluded by force the members elected by the people in order that the conspirators might be enabled to accomplish their work.

The primary authority to determine what is the legislature of a State is and must be the State herself. When the State determines that question for herself it is determined for all the world. In case there are two governments, or two bodies each claiming to be the true government or the true legislature of the State, and the State has not determined the controversy, the duty may devolve upon others, and in this case upon this Senate to adjudge that question *pro hac vice*.

In January, 1877, a portion of the members elected by the people united with those not elected and seized the State-house by co-operation with the sitting member, who then acting as governor, were barricaded in the building, which was surrounded with troops and refused to permit other elected members to be admitted into the building. The barricaded persons called themselves the legislature, and the excluded members met in St. Patrick's Hall and called themselves the legislature. This was the condition of affairs when the sitting member presented his credentials to this Senate and asked to

mitted to his seat on this floor. He was not admitted, but his credentials were referred to the Committee on Privileges and Elections. Before the committee took any action whatever the issue thus raised between these two rival bodies was settled by the State. It was decided that the body which assembled and organized in St. Patrick's Hall was the true legislature of the State. This decision was accepted by all the people of Louisiana and by all the departments of her government, by the President and House of Representatives, and by the circuit and district courts of the United States, and finally by all the persons who composed the body which seized the State-house. The latter, which had been known as the Packard legislature, disbanded, leaving not a resolution, or act, or other thing which has ever been recognized as authoritative, or which has been claimed to be valid, save only the pretended election of the sitting member to this Senate; and this single act has been recognized only by this Senate. The former body, which had been known as the Nicholls legislature, performed all the functions of a legislature from the beginning, passed laws which are obeyed by all the people and enforced by all the courts. All the persons who had been elected left the pretended Packard legislature and took their seats in the Nicholls legislature, and those who had not been elected admitted they were not elected, without even a contest, and went home or into the custom-house or some other Federal office.

The regular legislature thus organized, composed of all the members elected by the people, chose the memorialist to the seat he is now claiming. The election was free, regular, legal, and without taint of corruption of any kind, and his credentials are in due form. Of a legislature which was composed, when full, senate and house, of one hundred and fifty-six members, the memorialist received over 140 votes.

Since the former hearing in this case, the supreme court of Louisiana has also decided that the officers of the Packard government had, in January, 1877, no official status, and that no acts performed by them at that time, though purporting to be performed *virtute officii*, could have the force and effect of official acts.—(State *ex rel.* Lipo *vs.* Peck, 30 Annual Reports, 280.)

And in addition to all this, the evidence now taken shows that the Packard legislature, which pretended to elect the sitting member, was, in fact as well as in law, not a legislature, but was a body of men assembled by fraud, held together by force and controlled by bribery; with the aid and in the interest of the sitting member.

Thus, the facts, the law, the integrity of this Senate, and the voice of a too long defrauded State of this Union unite in demanding the passage of the following resolutions which your committee now submit for adoption by the Senate, to wit:

1. *Resolved*, That according to the evidence now known to the Senate, William Pitt Kellogg was not chosen by the legislature of Louisiana to the seat in the Senate for the term beginning on the 4th day of March, 1877, and is not entitled to sit in the same.

2. *Resolved*, That Henry M. Spofford was chosen by the legislature of Louisiana to the seat in the Senate for the term beginning on the 4th day of March, 1877, and that he be admitted to the same on taking the oath prescribed by law.

VIEWS OF THE MINORITY.

The undersigned, a minority of the Committee of Privileges and Elections, to whom was referred the memorial of Henry M. Spofford, claiming the seat now occupied by William Pitt Kellogg, submit the following as their views:

On the 30th day of November, 1877, the Senate passed the following resolutions:

"*Resolved*, That William Pitt Kellogg is, upon the merits of the case, entitled to a seat in the Senate of the United States from the State of Louisiana for the term of six years commencing on the 4th of March, 1877, and that he be admitted thereto on taking the proper oath.

"*Resolved*, That Henry M. Spofford is not entitled to a seat in the Senate of the United States."

The party majority in the Senate has changed since Mr. Kellogg took the oath of office in pursuance of the above resolution. Nothing else has changed. The facts which the Senate considered and determined were in existence then as now. It is sought, by mere superiority of numbers, for the first time to thrust a Senator from the seat which he holds by virtue of the express and deliberate final judgment of the Senate.

The act which is demanded of this party majority would be, in our judgment, a great public crime. It will be, if consummated, one of the great political crimes in American history, to be classed with the rebellion, with the attempt to take possession by fraud of the State government in Maine, and with the overthrow of State governments in the South, of which it is the fitting sequence. Political parties have too often been led by partisan zeal into measures which a sober judgment might disapprove, but they have ever respected the constitution of the Senate.

The men whose professions of returning loyalty to the Constitution have been trusted

by the generous confidence of the American people are now to give evidence of the sincerity of their vows. The people will thoroughly understand this matter, and will not be likely to be deceived again.

We do not think proper to enter here upon a discussion of the evidence by which the claimant of Mr. Kellogg's seat seeks to establish charges affecting the integrity of that Senator. Such evidence can be found in abundance in the slums of great cities. It is not fit to be trusted in cases affecting the smallest amount of property, much less the honor of an eminent citizen, or the title to an object of so much desire as a seat in the Senate. This evidence is not only unworthy of respect or credit, but it is in many instances wholly irreconcilable with undisputed facts, and Mr. Kellogg has met and overthrown it at every point.

GEORGE F. HOAR.
ANGUS CAMERON.
JOHN A. LOGAN.

WEDNESDAY, *March* 31, 1880.

On motion by Mr. Logan,

Ordered, That the evidence taken by the Committee on Privileges and Elections in the investigation of the allegations set forth in the memorial of Henry M. Spofford, claiming to be Senator from the State of Louisiana, be recommitted to said committee for the purpose of revising and correcting said evidence.

On motion by Mr. Logan,

Ordered, That the report of the evidence already printed be withdrawn from further distribution.

[The debate is found on pages 1985–1988 of the Congressional Record, vol. x, part 2.]

THURSDAY, *April* 22, 1880.

On motion by Mr. Saulsbury, the Senate proceeded to consider the resolutions reported by Mr. Hill, of Georgia, March 22, 1880, from the Committee on Privileges and Elections, declaring that William Pitt Kellogg was not elected, and that Henry M. Spofford was elected, a Senator of the United States from the State of Louisiana for the term beginning March 4, 1877.

FRIDAY, *April* 23, 1880.

The Senate resumed, &c.

[The debate is found on pages 2676–2683 of the Congressional Record, vol. x, part 3.]

MONDAY, *April* 26, 1880.

The Senate resumed, &c.

[The debate is found on pages 2735–2754 of the Congressional Record, vol. x, part 3.]

TUESDAY, *April* 27, 1880.

Mr. Hoar submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the proceedings* of the Committee on Privileges and Elections in the contested-election case of Spofford *vs.* Kellogg, in the months of October and November, 1877, be printed for the use of the Senate."

FRIDAY, *April* 30, 1880.

The Senate resumed, &c.

[The debate is found on pages 2909–2911 of the Congressional Record, vol. x, part 3.]

MONDAY, *May* 3, 1880.

The Senate resumed, &c.

[The debate is found on pages 2952–2960 of the Congressional Record, vol. x, part 3.]

TUESDAY, *May* 4, 1880.

The Senate resumed, &c.

[The debate is found on pages 2972–2982 of the Congressional Record, vol. x, part 3.]

FRIDAY, *May* 7, 1880.

The President *pro tempore* announced that the morning hour had expired, and called up the unfinished business of the Senate at its adjournment yesterday, viz, the resolutions reported by Mr. Hill, of Georgia, from the Committee on Privileges and Elections, March 22, 1880, declaring that William P. Kellogg was not elected, and that Henry M.

* Printed with Report No. 388, Senate Reports, 2d sess. 46th Cong., vol. 4.

Spofford was elected, a Senator of the United States from the State of Louisiana for the term beginning March 4, 1877; and the Senate resumed the consideration of the said resolutions.

After debate,

On motion by Mr. Hoar to amend the resolutions as follows, viz: Strike out all after the word "resolved" where it first appears, and insert the following:

"That in the judgment of the Senate the matters reported by the Committee on Privileges and Elections at the present session respecting the right to the seat in this body now held by William Pitt Kellogg and claimed by Henry M. Spofford are not sufficient to justify the reopening of the decision of the Senate, pronounced in its resolution adopted on the 30th day of November, A. D. 1877, that said Kellogg was, upon the merits of the case, lawfully entitled to a seat in the Senate of the United States from the State of Louisiana for the term of six years commencing on the 4th day of March, A. D. 1877, and that said Spofford was not entitled to a seat in the Senate of the United States,"

On motion by Mr. Conkling (at 5 o'clock and 10 minutes p. m.), the Senate adjourned.

[The debate is found on pages 3108–3116 of the Congressional Record, vol. x, part 4.]

MONDAY, *May* 10, 1880.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar,

After debate,

Ordered, That the further consideration thereof be postponed to to-morrow.

[The debate is found on pages 3161–3166 of the Congressional Record, vol. x, part 4.]

TUESDAY, *May* 11, 1880.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar,

Pending debate,

On motion by Mr. Eaton, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 3232–3240 of the Congressional Record, vol. x, part 4.]

WEDNESDAY, *May* 12, 1880.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar.

[The debate is found on pages 3270–3277 of the Congressional Record, vol. x, part 4.]

THURSDAY, *May* 13, 1880.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar.

[The debate is found on pages 3313–3322 of the Congressional Record, vol. x, part 4.]

FRIDAY, *May* 14, 1880.

The Senate proceeded, &c.

The question being on the amendment proposed by Mr. Hoar.

[The debate is found on pages 3362–3367 of the Congressional Record, vol. x, part 4.]

TUESDAY, *May* 18, 1880.

The Senate proceeded, &c.

The question being on the amendment proposed by Mr. Hoar.

[The debate is found on pages 3456–3462 of the Congressional Record, vol. x, part 4.]

WEDNESDAY, *May* 19, 1880.

The Senate proceeded, &c.

The question being on the amendment proposed by Mr. Hoar.

[The debate is found on pages 3511–3515 of the Congressional Record, vol. x, part 4.]

THURSDAY, *May* 20, 1880.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar.

[The debate is found on pages 3551–3565 of the Congressional Record, vol. x, part 4.]

SATURDAY, *June* 5, 1880.

The Senate resumed, &c.

[There was no debate.]

MONDAY, *June* 7, 1880.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar.

[The debate is found on pages 4238–4244 of the Congressional Record, vol. x, part 5.]

FRIDAY, *June* 11, 1880.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar,

After debate,

Ordered, That the further consideration of the resolutions be postponed to to-morrow.

On motion by Mr. Williams to postpone the present and all prior orders, it was determined in the affirmative—yeas 28, nays 16.

[The debate is found on pages 4414–4431 of the Congressional Record, vol. x, part 5.]

[Third session of the Forty-sixth Congress.]

CREDENTIALS OF THOMAS C. MANNING.

TUESDAY, *December* 7, 1880.

Mr. Jonas presented the credentials of Thomas Courtland Manning, appointed a Senator by the governor of Louisiana to fill the vacancy occasioned by the death of Henry M. Spofford, who claimed to be elected Senator from that State; which were referred to the Committee on Privileges and Elections.

COMPENSATION TO MR. SPOFFORD'S REPRESENTATIVES.

TUESDAY, *February* 22, 1881.

Mr. Hill, of Georgia, from the Committee on Privileges and Elections, reported the following resolution:

"*Resolved*, That the Secretary of the Senate be, and he is hereby, authorized and directed to pay out of the 'miscellaneous items' of the contingent fund of the Senate, to the legal representatives of the estate of the late Henry M. Spofford, contestant of a seat in the Senate from the State of Louisiana, a sum equal to the compensation, without mileage, of a Senator from the 4th day of March, 1877, to the 20th day of August, 1880, inclusive."

The Senate proceeded by unanimous consent to consider the said resolution as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third times, by unanimous consent.

Resolved, That the Senate agree thereto.

[The debate is found on pages 1911, 1912 of the Congressional Record, vol. xi, part 3.]

[First session of the Forty-seventh Congress.]

REIMBURSEMENT OF MR. KELLOGG'S EXPENSES.

FRIDAY, *March* 17, 1882.

Mr. Hoar, from the Committee on Privileges and Elections, reported the following resolution; which was read the first and second times, by unanimous consent:

"*Resolved*, That there be paid out of the contingent fund of the Senate the sum of $9,550 to William Pitt Kellogg, a Senator from the State of Louisiana, in reimbursement of expenses necessarily incurred by him in defense of his title to his seat."

MONDAY, *March* 20, 1882.

On motion by Mr. Hoar, the Senate proceeded to consider, as in Committee of the Whole, the resolution reported by him from the Committee on Privileges and Elections on the 17th instant, to pay W. P. Kellogg the expenses incurred by him in defending his title to a seat in the Senate; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time.

Resolved, That the Senate agree thereto.

COMPENSATION OF MR. MANNING.

WEDNESDAY, *July* 19, 1882.

Mr. Vance, from the Committee on Privileges and Elections, reported the following resolution; which was read the first and second times, by unanimous consent:

"*Resolved*, That there be paid out of the contingent fund of the Senate to Hon. Thomas C. Manning, who was appointed United States Senator from Louisiana by the governor thereof to fill the vacancy caused by the death of H. M. Spofford, the sum of $1,000, in full compensation of all expenses incurred in endeavoring to obtain the seat to which his credentials accredited him."

MONDAY, *August* 7, 1882.

On motion by Mr. Kellogg, the Senate proceeded to consider, as in Committee of the Whole, the resolution reported by Mr. Vance July 19, 1882, to pay to Thomas C. Manning, appointed a Senator from the State of Louisiana to fill the vacancy caused by the death of H. M. Spofford, the sum of $1,000; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time.

Resolved, That the Senate agree thereto.

by the generous confidence of the American people are now to give evidence of the sincerity of their vows. The people will thoroughly understand this matter, and will not be likely to be deceived again.

We do not think proper to enter here upon a discussion of the evidence by which the claimant of Mr. Kellogg's seat seeks to establish charges affecting the integrity of that Senator. Such evidence can be found in abundance in the slums of great cities. It is not fit to be trusted in cases affecting the smallest amount of property, much less the honor of an eminent citizen, or the title to an object of so much desire as a seat in the Senate. This evidence is not only unworthy of respect or credit, but it is in many instances wholly irreconcilable with undisputed facts, and Mr. Kellogg has met and overthrown it at every point.

GEORGE F. HOAR.
ANGUS CAMERON.
JOHN A. LOGAN.

WEDNESDAY, *March* 31, 1880.

On motion by Mr. Logan,

Ordered, That the evidence taken by the Committee on Privileges and Elections in the investigation of the allegations set forth in the memorial of Henry M. Spofford, claiming to be Senator from the State of Louisiana, be recommitted to said committee for the purpose of revising and correcting said evidence.

On motion by Mr. Logan,

Ordered, That the report of the evidence already printed be withdrawn from further distribution.

[The debate is found on pages 1985–1988 of the Congressional Record, vol. x, part 2.]

THURSDAY, *April* 22, 1880.

On motion by Mr. Saulsbury, the Senate proceeded to consider the resolutions reported by Mr. Hill, of Georgia, March 22, 1880, from the Committee on Privileges and Elections, declaring that William Pitt Kellogg was not elected, and that Henry M. Spofford was elected, a Senator of the United States from the State of Louisiana for the term beginning March 4, 1877.

FRIDAY, *April* 23, 1880.

The Senate resumed, &c.

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MONDAY, *April* 26, 1880.

The Senate resumed, &c.

[The debate is found on pages 2735–2754 of the Congressional Record, vol. x, part 3.]

TUESDAY, *April* 27, 1880.

Mr. Hoar submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the proceedings* of the Committee on Privileges and Elections in the contested-election case of Spofford *vs.* Kellogg, in the months of October and November, 1877, be printed for the use of the Senate."

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TUESDAY, *May* 4, 1880.

The Senate resumed, &c.

[The debate is found on pages 2972–2982 of the Congressional Record, vol. x, part 3.]

FRIDAY, *May* 7, 1880.

The President *pro tempore* announced that the morning hour had expired, and called up the unfinished business of the Senate at its adjournment yesterday, viz, the resolutions reported by Mr. Hill, of Georgia, from the Committee on Privileges and Elections March 22, 1880, declaring that William P. Kellogg was not elected, and that Henry M.

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Spofford was elected, a Senator of the United States from the State of Louisiana for the term beginning March 4, 1877; and the Senate resumed the consideration of the said resolutions.

After debate,

On motion by Mr. Hoar to amend the resolutions as follows, viz: Strike out all after the word "resolved" where it first appears, and insert the following:

"That in the judgment of the Senate the matters reported by the Committee on Privileges and Elections at the present session respecting the right to the seat in this body now held by William Pitt Kellogg and claimed by Henry M. Spofford are not sufficient to justify the reopening of the decision of the Senate, pronounced in its resolution adopted on the 30th day of November, A. D. 1877, that said Kellogg was, upon the merits of the case, lawfully entitled to a seat in the Senate of the United States from the State of Louisiana for the term of six years commencing on the 4th day of March, A. D. 1877, and that said Spofford was not entitled to a seat in the Senate of the United States."

On motion by Mr. Conkling (at 5 o'clock and 10 minutes p. m.), the Senate adjourned.

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MONDAY, *May* 10, 1880.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar,

After debate,

Ordered, That the further consideration thereof be postponed to to-morrow.

[The debate is found on pages 3161–3166 of the Congressional Record, vol. x, part 4.]

TUESDAY, *May* 11, 1880.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar,

Pending debate,

On motion by Mr. Eaton, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 3232–3240 of the Congressional Record, vol. x, part 4.]

WEDNESDAY, *May* 12, 1880.

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The question being on the amendment proposed by Mr. Hoar.

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TUESDAY, *May* 18, 1880.

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The question being on the amendment proposed by Mr. Hoar.

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WEDNESDAY, *May* 19, 1880.

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SATURDAY, *June* 5, 1880.

The Senate resumed, &c.

[There was no debate.]

MONDAY, *June* 7, 1880.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar.

[The debate is found on pages 4238–4244 of the Congressional Record, vol. x, part 5.]

FRIDAY, *June* 11, 1880.

The Senate resumed, &c.

The question being on the amendment proposed by Mr. Hoar,

After debate,

Ordered, That the further consideration of the resolutions be postponed to to-morrow.

On motion by Mr. Williams to postpone the present and all prior orders, it was determined in the affirmative—yeas 28, nays 16.

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[Third session of the Forty-sixth Congress.]

CREDENTIALS OF THOMAS C. MANNING.

TUESDAY, *December* 7, 1880.

Mr. Jonas presented the credentials of Thomas Courtland Manning, appointed a Senator by the governor of Louisiana to fill the vacancy occasioned by the death of Henry M. Spofford, who claimed to be elected Senator from that State; which were referred to the Committee on Privileges and Elections.

COMPENSATION TO MR. SPOFFORD'S REPRESENTATIVES.

TUESDAY, *February* 22, 1881.

Mr. Hill, of Georgia, from the Committee on Privileges and Elections, reported the following resolution:

"*Resolved*, That the Secretary of the Senate be, and he is hereby, authorized and directed to pay out of the 'miscellaneous items' of the contingent fund of the Senate, to the legal representatives of the estate of the late Henry M. Spofford, contestant of a seat in the Senate from the State of Louisiana, a sum equal to the compensation, without mileage, of a Senator from the 4th day of March, 1877, to the 20th day of August, 1880, inclusive."

The Senate proceeded by unanimous consent to consider the said resolution as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third times, by unanimous consent.

Resolved, That the Senate agree thereto.

[The debate is found on pages 1911, 1912 of the Congressional Record, vol. xi, part

[First session of the Forty-seventh Congress.]

REIMBURSEMENT OF MR. KELLOGG'S EXPENSES.

FRIDAY, *March* 17, 1882.

Mr. Hoar, from the Committee on Privileges and Elections, reported the following resolution; which was read the first and second times, by unanimous consent:

"*Resolved*, That there be paid out of the contingent fund of the Senate the sum of $9,550 to William Pitt Kellogg, a Senator from the State of Louisiana, in reimbursement of expenses necessarily incurred by him in defense of his title to his seat."

MONDAY, *March* 20, 1882.

On motion by Mr. Hoar, the Senate proceeded to consider, as in Committee of the Whole, the resolution reported by him from the Committee on Privileges and Elections on the 17th instant, to pay W. P. Kellogg the expenses incurred by him in defending his title to a seat in the Senate; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time.

Resolved, That the Senate agree thereto.

COMPENSATION OF MR. MANNING.

WEDNESDAY, *July* 19, 1882.

Mr. Vance, from the Committee on Privileges and Elections, reported the following resolution; which was read the first and second times, by unanimous consent:

"*Resolved*, That there be paid out of the contingent fund of the Senate to Hon. Thomas C. Manning, who was appointed United States Senator from Louisiana by the governor thereof to fill the vacancy caused by the death of H. M. Spofford, the sum of $1,000, in full compensation of all expenses incurred in endeavoring to obtain the seat to which his credentials accredited him."

MONDAY, *August* 7, 1882.

On motion by Mr. Kellogg, the Senate proceeded to consider, as in Committee of the Whole, the resolution reported by Mr. Vance July 19, 1882, to pay to Thomas C. Manning, appointed a Senator from the State of Louisiana to fill the vacancy caused by the death of H. M. Spofford, the sum of $1,000; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time.

Resolved, That the Senate agree thereto.

[Special session of Senate, March, 1873.]

LEWIS V. BOGY,

Senator from Missouri from March 4, 1873, *till his death, September* 20, 1877.

March 4, 1873, Mr. Bogy took his seat, having been elected for the term of six years from that date. March 17, the Vice-President laid before the Senate a memorial of members of the legislature accompanied by a report of a select committee of the legislature appointed to investigate charges of bribery and corruption in the Senatorial election, praying for an investigation by the Senate of said charges. The memorial was referred to the Committee on Privileges and Elections. March 25, the committee reported that the memorial set forth that the investigation by the committee of the legislature was imperfect, and that if it had been full and fair, evidence would have been produced showing that there was corruption in Mr. Bogy's election; that the memorial did not state the character of the new evidence that could be produced, and that the Senate would not be justified in instituting an examination; that such a proceeding was of a grave character and should not be set on foot without such a statement of the evidence that could probably be produced as would appear to make it the duty of the Senate to proceed to an investigation. The committee reported a resolution that it be discharged from the further consideration of the memorial; which was agreed to.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from the Senate Journal, 3d sess. 42d Cong. (special session, March, 1873), and the report of the committee from Senate Reports, 3d sess. 42d Cong. (No. 1, special session, March, 1873).

There were no debates.

TUESDAY, *February* 25, 1873.

Mr. Schurz presented the credentials of Lewis V. Bogy, elected a Senator in Congress by the legislature of the State of Missouri for the term of six years commencing on the 4th day of March, 1873; which were read.

Ordered, That they lie on the table.

FRIDAY, *February* 28, 1873.

The Vice-President laid before the Senate a resolution of the legislature of Missouri exonerating Hon. Lewis V. Bogy, Senator-elect from that State, from any suspicion of having used corrupt means to secure his election to the United States Senate.

Ordered, That it lie on the table and be printed.

TUESDAY, *March* 4, 1873.

The credentials of Lewis V. Bogy having been heretofore presented to the Senate, the oaths prescribed by law were administered to him by the Vice-President and he took his seat in the Senate.

MONDAY, *March* 17, 1873.

The Vice-President laid before the Senate the memorial of members of the legislature of the State of Missouri, accompanied by a report of a select committee of said legislature appointed to investigate charges of bribery and corruption in the recent Senatorial election in that State, and the views of a minority of the committee therewith, praying that certain charges of bribery and corruption against Lewis V. Bogy, recently elected a Senator from the State of Missouri, may be promptly and fully investigated by the Senate.

Ordered, That it be referred to the Committee on Privileges and Elections.

TUESDAY, *March* 25, 1873.

Mr. Morton, from the Committee on Privileges and Elections, to whom was referred the memorial of members of the legislature of the State of Missouri, praying that an investigation be made by the Senate of certain charges of bribery and corruption against Lewis V. Bogy in his recent election as Senator from that State, submitted a report (No. 1) accompanied by the following resolution:

"*Resolved*, That the Committee on Privileges and Elections be discharged from the further consideration of the memorial of members of the legislature of the State of Missouri, together with the evidence accompanying the same, touching the allegations of bribery and corruption in the election of Lewis V. Bogy to the Senate of the United States."

The Senate proceeded to consider the said resolution; and the resolution was agreed to.

after they may be delivered to him, and take a receipt from the judge of probate for such sealed ballot-boxes.

"SEC. 36. *Be it further enacted*, That judges of probate, sheriffs, and clerks of the circuit court, or any two of them, of the several counties are hereby constituted a board of supervisors of elections in and for their respective counties; and it shall be the duty of said board of supervisors to open, compare, and count the ballots cast at all elections.

"SEC. 37. *Be it further enacted*, That it shall be the duty of the board of supervisors of elections, upon good and sufficient evidence that fraud has been perpetrated, or unlawful or wrongful means resorted to to prevent electors from freely and fearlessly casting their ballots, to reject such illegal or fraudulent votes cast at any of such polling places, which rejection, so made as aforesaid, shall be final, unless appeal is taken within ten days to the probate court; and in case of a tie for any county officer, the board of supervisors shall decide.

"SEC. 38. *Be it further enacted*, That it shall be the duty of the board of supervisors, within five days from the date of receiving the sealed boxes and certificates of the number of votes cast at each polling place from the inspectors, to make certificates, on blanks furnished by the secretary of state, of the exact number of votes cast in their county for each person, stating the office such person is voted for, and forward them, excepting for governor, lieutenant-governor, secretary of state, auditor, treasurer, and attorney-general, to the secretary of state, who shall, after such returns have been duly examined by the secretary of state, be filed as other public papers required to be kept in his office, and shall be subject to the inspection of any elector of this State.

"SEC. 39. *Be it further enacted*, That the board of supervisors shall forward a certified return of election for governor, lieutenant-governor, secretary of state, auditor, treasurer, and attorney-general to the presiding officer of the senate at least thirty days before the time fixed for the meeting of the next general assembly.

"SEC. 40. *Be it further enacted*, That it shall be the duty of the presiding officer of the senate, within five days after the assembling of the general assembly, in the presence of a majority of the members of the general assembly, to open the returns and proclaim the result of such election, after which they shall be filed in the office of secretary of state, as required by section thirty-seven of this act.

"SEC. 41. *Be it further enacted*, That it shall be the duty of the secretary of state to furnish, from time to time, the board of county supervisors with all necessary blanks upon which to make election returns.

"SEC. 42. *Be it further enacted*, That it shall be the duty of the secretary of state to forward certificates of election to such persons as may be ascertained to be elected to any office in this State, addressed to the board of supervisors, at the court-house of the county in which such person returned as elected may reside, within ten days after receiving such returns of election from the supervising board of the county; and it shall be the duty of said board of supervisors to forward said election certificates to the persons entitled thereto."

Section 7 of Article IV of the constitution provides as follows:

"A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide."

On the 18th day of November, 1872, the day fixed by law for the assembling of the legislature, eighteen persons holding the required certificates of election as senators, issued to them by the secretary of state, appeared in the senate chamber in the capitol at Montgomery, and at 12 o'clock noon were called to order by the holding-over lieutenant-governor, Moren. They exhibited their certificates of election issued to them by the secretary of state, enrolled their names as senators, took the oath of office in due form, and proceeded to the election of officers *pro tempore*, viz, secretary, assistant secretary, and other officers. On the next day another senator presented his certificate, enrolled himself, and took the oath of office, in pursuance of section 48 of the revised code of Alabama. All of said senators took the oath prescribed by Article XIV of the constitution before the Hon. J. Q. Smith, one of the circuit judges of the State of Alabama. On the next day the senate, so constituted, proceeded to elect its permanent officers, all its proceedings being under the presidency of the Hon. E. H. Moren, lieutenant-governor of the State. Said proceedings were had by a majority of the whole number required by the constitution to constitute a senate.

On the 18th day of November, 1872, at the hour of 12 o'clock noon, the Hon. John P. Hubbard, speaker of the previous house of representatives, took his seat at the speaker's desk in the hall of the house of representatives in the capitol in Montgomery, and called the house to order. Less than one-half of the hundred persons who constitute a full house appeared in their places. These persons exhibited certificates of election to the house of representatives issued to them by the secretary of state, as required by the act before quoted, enrolled themselves as members of the house, and adjourned until the next day.

[Special session of Senate, March, 1873; and first sessions of the Forty-third and Forty-fourth Congresses.]

FRANCIS W. SYKES vs. GEORGE E. SPENCER; AND GEORGE E. SPENCER,

of Alabama.

December 13, 1872, the credentials of Mr. Spencer, elected for the term beginning March 4, 1873, were presented, and February 28, 1873, a memorial of Mr. Sykes claiming to have been elected for the same term was presented. Mr. Spencer was admitted, after debate, March 7. December 8, the memorial of Mr. Sykes was referred to the Committee on Privileges and Elections. April 20, 1874, the committee reported that at the time of the elections there were in Alabama two bodies, each claiming to be the legislature, one known as the court-house legislature, which had elected Mr. Spencer, December 3, 1872, the other known as the State-house legislature, which had chosen Mr. Sykes, December 10, 1872; that at the time of the election of Mr. Spencer there were eight or nine members of the State-house legislature having regular certificates of election, but "who are conceded not to have been elected"; that persons claiming the seats of these eight or nine members, but having no certificates of election, were in the court-house legislature; that the question to be decided was whether that legislature composed of a quorum of the persons actually elected should be regarded as the legislature of the State, or whether that legislature the quorum of which depended upon members not actually elected, but having regular certificates of election, should be regarded as the legal legislature; that the State-house legislature was the legislature in form, and the court-house legislature the legislature in fact; that it would not be competent for the Senate to inquire as to the right of individual members to sit in a legislature that is conceded to have a quorum in both houses of legally elected members; but that the Senate must in this case inquire into the rights to hold seats of the eight or nine members whose rights to seats were disputed, in order to determine which of the two bodies was the legal legislature: and that in such inquiry the Senate should not look merely to the evidence of the fact, but go back to the fact itself and determine who of those claiming seats were in fact elected; that the persons claiming to be the legislature who voted for Mr. Spencer constituted a quorum of the members actually elected. The committee asked to be discharged from the further consideration of the subject. There was a minority report. May 28, the Senate resolved that the committee be discharged from further consideration of the subject. A favorable report was made by the committee on a resolution to allow Mr. Sykes compensation and mileage, but no further action was taken by the Senate.

December 16, 1875, Mr. Spencer submitted a resolution that the committee be instructed to inquire whether in the election of Mr. Spencer corrupt means were used to secure his election. A report of a joint committee of the Alabama legislature on the election, and a memorial of the legislature that the seat held by Mr. Spencer be declared vacant, were also referred to the committee. May 20, 1876, the committee reported that the question whether Mr. Spencer was elected by the lawful legislature, raised in the memorial referred to, must be treated as *res adjudicata*; that upon the question whether Mr. Spencer or his friends had been guilty of bribery or corruption, the committee had made diligent inquiry, and had found that the charges were not proven; that no witness testified that Mr. Spencer or his friends had given or offered to give money or anything of value in consideration of votes; that only hearsay evidence to this effect was offered, which had been rejected by the committee. The committee reported the testimony taken and asked to be discharged from the further consideration of the subject. No further action was taken by the Senate. March 3, 1885, the Senate resolved that there be paid to Mr. Spencer the amount actually and necessarily expended by him in maintaining his title to his seat.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 3d sess. 42d Cong., and 1st sess. 43d and 44th Congs., and the reports of the committee, references to which are given in foot-notes.

Special references to the debates of each day are inserted below.

FRIDAY, *December* 13, 1872.

Mr. Morton presented the credentials of George E. Spencer, elected a Senator by the legislature of Alabama for the term of six years commencing March 4, 1873; which were read.

Ordered, That they lie on the table.

FRIDAY, *February* 28, 1873.

Mr. Goldthwaite presented a memorial* of Francis W. Sykes, claiming a seat in the Senate as Senator from the State of Alabama for the term of six years commencing March 4, 1873.

Ordered, That it lie on the table and be printed.

[Special session of Senate, March, 1873.]

THURSDAY, *March* 6, 1873.

Mr. George E. Spencer, whose credentials had been heretofore presented to the Senate

*Found in Senate Miscellaneous, 3d sess. 42d Cong., No. 94.

as a Senator from the State of Alabama, advanced to the Vice-President's chair to take the oath of office,

When

Mr. Bayard rose and objected to the oaths being administered to Mr. Spencer; and,

On the question, Shall the oaths be administered to Mr. Spencer?

After debate,

On motion by Mr. Bayard that the further consideration thereof be postponed to to-morrow,

After further debate,

On motion by Mr. Hamlin, the Senate adjourned.

[The debate is found on pages 3–19 of the Congressional Record, vol. i.]

FRIDAY, *March* 7, 1873.

The Senate resumed the consideration of the question of administering the oaths of office to George E. Spencer as a Senator from the State of Alabama; and

The question being on the motion submitted by Mr. Bayard that the further consideration thereof be postponed to to-morrow,

After debate,

It was determined in the negative—yeas 24, nays 32.

After further debate,

On motion by Mr. Bayard to refer the credentials of Mr. Spencer, and the memorial of Francis W. Sykes, claiming the seat in question, to a select committee of five Senators, it was determined in the negative—yeas, 20, nays 38.

On motion of Mr. Bayard, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Bogy, Casserly, Cooper, Davis, Dennis, Fenton, Goldthwaite, Hamilton of Maryland, Hamilton of Texas, Kelly, McCreery, Merrimon, Norwood, Ransom, Saulsbury, Stevenson, Stockton, Thurman, and Tipton.

Those who voted in the negative are Messrs. Alcorn, Allison, Ames, Boreman, Brownlow, Buckingham, Caldwell, Cameron, Chandler, Clayton, Conkling, Conover, Cragin, Dorsey, Ferry of Connecticut, Ferry of Michigan, Flanagan, Gilbert, Hamlin, Hitchcock, Howe, Ingalls, Jones, Lewis, Logan, Mitchell, Morrill of Vermont, Morton, Oglesby, Patterson, Pratt, Ramsey, Sargent, Stewart, Wadleigh, West, Windom, and Wright.

So the motion was not agreed to.

On motion by Mr. Thurman that the further consideration of the question be postponed until the committees of the Senate are organized, it was determined in the negative.

After further debate,

On the question, Shall the oaths of office be administered to Mr. Spencer? it was determined in the affirmative.

Whereupon

Mr. Spencer advanced to the chair, and the oaths of office having been administered to him by the Vice-President, he took his seat in the Senate.

[The debate is found on pages 20–29 of the Congressional Record, vol. i.]

[First session of the Forty-third Congress.]

MONDAY, *December* 8, 1873.

Mr. Gordon submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the memorial of Francis W. Sykes, claiming to be a Senator-elect from the State of Alabama, with accompanying documents, be referred to the Committee on Privileges and Elections, with power to send for persons and papers."

MONDAY, *April* 20, 1874.

Mr. Carpenter, from the Committee on Privileges and Elections, to whom was referred the memorial of Francis W. Sykes, claiming a seat in the Senate as Senator from the State of Alabama, submitted a report (No. 291), with a recommendation that the committee be discharged from the further consideration of the memorial.

Mr. Saulsbury asked and obtained leave to submit the views of the minority of the Committee on Privileges and Elections on the foregoing memorial; which were ordered to be printed to accompany the report of the committee.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Morton (chairman), Carpenter, Logan, Alcorn, Anthony, Mitchell, Wadleigh, Hamilton of Maryland, and Saulsbury.]

IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1874.—Ordered to be printed.

Mr. Carpenter submitted the following report:

The Committee on Privileges and Elections, to whom was referred the memorial of Francis W. Sykes, claiming to be Senator-elect from the State of Alabama, together with accompanying documents, respectfully submit the following report:

Mr. Sykes claims the seat now held by Hon. George E. Spencer as Senator from the State of Alabama; and his claim is based upon the assertion that the body claiming to be the legislature of the State of Alabama which elected the said Spencer was not the rightful legislature of that State, but that another body of men was such legislature; and that the latter body, on the 10th day of December, A. D. 1872, duly elected the said Sykes to be the Senator of the United States for that State for the term of six years commencing on the 4th day of March, A. D. 1873.

It is a fact that for some time after the day fixed by law for the organization of the legislature of that State, in 1872, there were two bodies, each claiming to be the legislature of that State—one known as the State-house legislature, which pretended to elect Mr. Sykes, and the other known as the court-house legislature, which pretended to elect Mr. Spencer; and the question is, which of these two bodies ought to be considered the rightful legislature at that time? On the 3d day of December, 1872, the court-house legislature, so called, pretended to elect Mr. Spencer. The governor of the State certified that Mr. Spencer had been duly elected on that day by the legislature of the State; and the Senate, upon that certificate, seated Mr. Spencer as a Senator for the term in question. The first question is, therefore, whether the body of men which pretended to elect Mr. Spencer can properly be regarded as the legislature of the State at the time of such pretended election. If so, Mr. Spencer's election was valid, and, of course, if that be so, Mr. Sykes can have no right to the same seat during the same term.

The general election in that State was held on the 5th day of November, 1872. The time fixed for the meeting of the legislature thereafter was on the 18th of November, 1872. The constitution of the State provides, section 6, Article IV: "The house of representatives, when assembled, shall choose a speaker and its other officers, and the senate shall choose a president, in the absence of the lieutenant-governor, and its other officers; each house shall judge of the qualifications, elections, and returns of its own members, but a contested election shall be determined in such manner as shall be directed by law. The president of the senate and the speaker of the house of representatives shall remain in office until their successors are elected and qualified."

By Article VIII of the constitution of Alabama, the house of representatives is declared to consist of one hundred members, apportioned among, and elected from, the counties of the State as directed in said article. The senate consists of thirty-three members, elected by the voters from the senatorial districts, as directed in said article, and these two bodies constitute the general assembly of the State, and in them, by section 1, Article I of the constitution, is vested the legislative power of the State.

By section 38 of the revised code of Alabama, which was re-enacted and continued in force by an act approved July 29, 1868, the general assembly is required to convene in the city of Montgomery.

It is provided by the act to regulate elections in Alabama as follows:

"SEC. 33. *Be it further enacted*, That one of the inspectors must number each ballot with the same number as the name of the voter on the poll-list, and the ballot must then, without being opened or examined, be deposited in the proper ballot-box.

"SEC. 34. *Be it further enacted*, That there shall be no challenging of electors appearing to vote at any election hereafter held in this State, and any registered voter appearing to vote at any election in this State shall be allowed to do so without question, challenge, or objection by any person; and any person who questions, challenges, or objects, or who unlawfully hinders or delays any person offering to vote, shall be guilty of a misdemeanor, and, on conviction, shall be fined five hundred dollars, and, on failure to pay the same, shall be imprisoned in the county jail for six months.

"SEC. 35. *Be it further enacted*, That it shall be the duty of the inspectors of all elections in the election precincts, immediately on the closing of the polls, to count out the votes that have been polled, and, after so doing, to promptly certify the poll-list, seal up the boxes containing the ballots and poll-list, and deliver them to the returning officer, who shall deliver such sealed boxes to the judge of probate within forty-eight hours

after they may be delivered to him, and take a receipt from the judge of probate for such sealed ballot-boxes.

"SEC. 36. *Be it further enacted*, That judges of probate, sheriffs, and clerks of the circuit court, or any two of them, of the several counties are hereby constituted a board of supervisors of elections in and for their respective counties; and it shall be the duty of said board of supervisors to open, compare, and count the ballots cast at all elections.

"SEC. 37. *Be it further enacted*, That it shall be the duty of the board of supervisors of elections, upon good and sufficient evidence that fraud has been perpetrated, or unlawful or wrongful means resorted to to prevent electors from freely and fearlessly casting their ballots, to reject such illegal or fraudulent votes cast at any of such polling places, which rejection, so made as aforesaid, shall be final, unless appeal is taken within ten days to the probate court; and in case of a tie for any county officer, the board of supervisors shall decide.

"SEC. 38. *Be it further enacted*, That it shall be the duty of the board of supervisors, within five days from the date of receiving the sealed boxes and certificates of the number of votes cast at each polling place from the inspectors, to make certificates, on blanks furnished by the secretary of state, of the exact number of votes cast in their county for each person, stating the office such person is voted for, and forward them, excepting for governor, lieutenant-governor, secretary of state, auditor, treasurer, and attorney-general, to the secretary of state, who shall, after such returns have been duly examined by the secretary of state, be filed as other public papers required to be kept in his office, and shall be subject to the inspection of any elector of this State.

"SEC. 39. *Be it further enacted*, That the board of supervisors shall forward a certified return of election for governor, lieutenant-governor, secretary of state, auditor, treasurer, and attorney-general to the presiding officer of the senate at least thirty days before the time fixed for the meeting of the next general assembly.

"SEC. 40. *Be it further enacted*, That it shall be the duty of the presiding officer of the senate, within five days after the assembling of the general assembly, in the presence of a majority of the members of the general assembly, to open the returns and proclaim the result of such election, after which they shall be filed in the office of secretary of state, as required by section thirty-seven of this act.

"SEC. 41. *Be it further enacted*, That it shall be the duty of the secretary of state to furnish, from time to time, the board of county supervisors with all necessary blanks upon which to make election returns.

"SEC. 42. *Be it further enacted*, That it shall be the duty of the secretary of state to forward certificates of election to such persons as may be ascertained to be elected to any office in this State, addressed to the board of supervisors, at the court-house of the county in which such person returned as elected may reside, within ten days after receiving such returns of election from the supervising board of the county; and it shall be the duty of said board of supervisors to forward said election certificates to the persons entitled thereto."

Section 7 of Article IV of the constitution provides as follows:

"A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide."

On the 18th day of November, 1872, the day fixed by law for the assembling of the legislature, eighteen persons holding the required certificates of election as senators, issued to them by the secretary of state, appeared in the senate chamber in the capitol at Montgomery, and at 12 o'clock noon were called to order by the holding-over lieutenant-governor, Moren. They exhibited their certificates of election issued to them by the secretary of state, enrolled their names as senators, took the oath of office in due form, and proceeded to the election of officers *pro tempore*, viz, secretary, assistant secretary, and other officers. On the next day another senator presented his certificate, enrolled himself, and took the oath of office, in pursuance of section 48 of the revised code of Alabama. All of said senators took the oath prescribed by Article XIV of the constitution before the Hon. J. Q. Smith, one of the circuit judges of the State of Alabama. On the next day the senate, so constituted, proceeded to elect its permanent officers, all its proceedings being under the presidency of the Hon. E. H. Moren, lieutenant-governor of the State. Said proceedings were had by a majority of the whole number required by the constitution to constitute a senate.

On the 18th day of November, 1872, at the hour of 12 o'clock noon, the Hon. John P. Hubbard, speaker of the previous house of representatives, took his seat at the speaker's desk in the hall of the house of representatives in the capitol in Montgomery, and called the house to order. Less than one-half of the hundred persons who constitute a full house appeared in their places. These persons exhibited certificates of election to the house of representatives issued to them by the secretary of state, as required by the act before quoted, enrolled themselves as members of the house, and adjourned until the next day.

and Hon. Lewis M. Stone, holding a certificate of election issued to him by
tary of state as a member of said house from the county of Pickens, was chose
of said house of representatives. All of these proceedings of said house were
it under the presidency of Hon. John P. Hubbard, the speaker of the previou
representatives, who, until the election of his successor, occupied the chair.
bard, upon the election of the new speaker, retired and Mr. Stone assumed the
speaker of the house. The house then proceeded to the election of subordinat
and so fully organized itself, as the senate had previously, under the authority
IV, section 6 of the constitution of Alabama.

These two bodies of men constituted what is known as the State-house le
which pretended to elect Mr. Sykes as Senator. This legislature was recogniz
Hon. Robert B. Lindsay, who, under the constitution, remained governor of
until the canvass of votes subsequently made by the State house legislature
was ascertained and declared by them that Hon. David P. Lewis had been el
ernor; and thereupon the said Lewis took the oath of office and entered upo
charge of its duties.

On the same 18th day of November, two other bodies of men assembled at
house, one claiming to be the senate and the other the house of representa
legislature of said State. After Governor Lewis was inaugurated he recog
court-house legislature as the proper and legal legislature of the State.

The contest between these two legislatures depends upon this: In the St
legislature were eight or nine members who had received regular certificates o
but who are conceded not to have been elected. There were of this class a
number, together with unquestioned members, to make a quorum in both hou
State-house legislature. In the court-house legislature, persons claiming th
this class of members of the State-house legislature assembled with others
undoubtedly members-elect to the senate and house of representatives, and the
stituted in numbers a quorum of the two houses at the court-house. And th
is, whether at the time the election of Spencer took place by the court-house l
that legislature, composed of a quorum of the persons actually elected, shou
garded as the legislature of the State; or whether the State-house legislature,
in both houses being made by this class of persons who in fact were not electe
the regular certificates of election, should be regarded as the legal legislat
this again depends upon another question: whether for the time being, and u
decision by the two houses could be arrived at, the eight or nine persons holdi
cates without the election or the eight or nine persons elected but having no c
are to be considered as entitled to act and form part of the legislature of the S

It is provided by the law of the State, passed in pursuance of section 6, A
of the Constitution, among other things, as follows:

"SEC. 45. That the election of persons declared elected to any office, whet
county, Representatives in Congress, or to any office which is filled by a v
people, may be contested by any qualified elector of this State for any one o

braced in this act he must make a statement in writing setting forth specifically, first, the names of the party contesting, and that he was a qualified voter at the time the election was held; second, the office which said election was held to fill, and the time of holding the same; third, the particular ground or grounds of such contest; which statement must be verified by the oath of the contesting party, or some one for such party, to the effect that he believes the same to be true.

"SEC. 48. That it shall be the duty of the probate judge to deliver to either party, on his application, copies of the poll-lists on being paid his legal fees therefor, and on the trial of the contest the judge of probate shall be required by a *subpœna duces tecum* to produce the original poll-lists and ballots, filed in his office for enumeration, which shall be received as conclusive evidence of the fact that the person named in the poll-lists voted, and for whom he voted.

* * * * * * *

"SEC. 51. That any elector contesting the election of any senator or representative to the general assembly, he must first give security for the costs of such contest, which must be acknowledged before and approved by the clerk of the circuit court of any county of the senatorial district, if such contest be for the election of a senator; or if for the election of a representative, by the clerk of the circuit court of the county in which such election was held.

"SEC. 52. That the contesting party must next give notice to the person whose election is contested, by having served on him, or left at his usual place of residence, by the sheriff or some constable, a copy of the grounds of contestation and affidavit, as required by the provision of section 45 of this act.

"SEC. 53. That the security for costs must be given, and the person whose election is contested notified in the mode prescribed in the preceding section, within twenty days after he is declared elected.

"SEC. 54. That the original statement of the grounds of contest and affidavit must, after such service, be returned to the office of the clerk of the circuit court in which security for the costs has been given, with the return of the officer indorsed, which is presumptive evidence of the service.

* * * * * * *

"SEC. 61. That testimony taken in contests of election under this act must be certified, indorsed, and sealed up, as is required in taking depositions at suits at law. And if the contest is of the election of a senator or member of the house of representatives of the general assembly, the depositions must be directed to the presiding officer of that branch of the general assembly before which such contest is to be tried, at the seat of government, and deposited in the nearest post-office.

"SEC. 62. That on the determination of such contest, the secretary of the senate or clerk of the house, as the case may be, must tax the costs due to the commissioner, witnesses, the sheriff and other officers, for serving notices and subpœnas as for similar service in courts of law, and certify the amount of each separate item, the name of the person entitled thereto, and the result of such contest, to the clerk of the circuit court, in which security for costs is required to be given by the provisions of this act. And the clerk of such court must thereupon issue execution in favor of the successful party for the amount of such costs, specifying the items, the amount of each, and the persons entitled thereto, in the bill of costs, which execution must be made returnable to the term of the circuit court of such county next after its issue, and may be issued as often as may be necessary, and must, when collected, be paid by the officer collecting on demand to the parties entitled thereto."

It is not pretended that the persons who were elected, but had not received certificates of election, took the steps required by this statute to contest the seats of the persons who held the certificates, but had not been elected. It is claimed, and with great force, that, until a contest, in the manner provided by law, the members who had received the certificates of election, although those certificates had been erroneously delivered and they were not in fact elected, were entitled to sit as members of the legislature. It is undoubtedly true that had all the persons claiming to be members of the legislature met in the State-house, and the two houses had proceeded there to organize, the persons holding the certificate, without the election, would have been entitled to their seats until the persons who had been elected, but had received no certificates, should make contests for their seats and their claim should be determined by the houses themselves.

The matter, then, comes to this: The State-house legislature was the legislature in form, and the court-house legislature was the legislature in fact. While these two pretended legislatures were in existence, each claiming to possess the legislative power of the State, Spencer was elected to the Senate by the court-house legislature, and Sykes was elected by the State-house legislature. Spencer was first elected, and on the day of his election the court-house legislature was recognized by the governor as the legal legis-

lature of the State. Therefore, in determining as to the right of Spencer or Sykes to tl seat, the Senate is compelled to choose between the body in fact elected, organized, a ing, and recognized by the executive department as the legislature, and another boc organized in form, but without the election and without a recognition on the part of t executive of the State at the time they pretended to elect Sykes. When we consic that all the forms prescribed by law for canvassing and certifying an election, and : the organization of the two houses, are designed to secure to the persons actually elect the right to act in the offices to which in fact they have been elected, it would be sac ficing the end to the means were the Senate to adhere to the mere form, and thus defe the end which the forms were intended to secure.

The persons in the two bodies claiming to be the senate and house of representati who voted for Spencer constituted a quorum of both houses of the members actua elected; the persons in the State-house legislature who voted for Sykes did not constitt a quorum of the two houses duly elected, but a quorum of persons certified to have be elected to the two houses. Were the Senate to hold Sykes's election to be valid, it wou follow that erroneous certificates, delivered to men conceded not to be elected, had e abled persons who in fact ought not to vote for a Senator to elect a Senator to misrepr sent the State for six years. On the other hand, if we treat the court-house legislatu as the legal legislature of the State, it is conceded that we give effect to the will of th people as evidenced by the election. So that, to state the proposition in other words, w are called upon to choose between the form and the substance, the fiction and the fact and, considering the importance of the election of a Senator, in the opinion of your com mittee the Senate would not be justified in overriding the will of the people, as expresse at the ballot-box, out of deference to certificates issued erroneously to persons who wer not elected.

In the opinion of your committee it is not competent for the Senate to inquire as t the right of individual members to sit in a legislature which is conceded to have a quo rum in both houses of legally elected members. But undoubtedly the Senate mus always inquire whether the body which pretended to elect a Senator was the legislatur of the State or not; because a Senator can only be elected by the legislature of a State In this case, Spencer having been seated by the Senate, and being *prima facie* entitled t hold the seat, the Senate cannot oust him without going into an inquiry in regard to th right of the individual persons who claim to constitute the quorum in these respectiv bodies at the court-house and at the State-house. We cannot oust Spencer from his sea without inquiring and determining that the eight or nine individuals who were electe were not entitled to sit in the legislature of the State because they lacked the certif cates. But if the Senate can inquire into this question at all, it must certainly inqui for the fact rather than the evidence of the fact. It cannot be maintained that whe the Senate has been compelled to enter upon such an examination it is estopped by me *prima facie* evidence of the fact, and the certificate is conceded to be nothing more tha *prima facie* evidence. But the Senate must go back of that to the fact itself, and dete mine whether the persons claiming to hold seats were in fact elected. When we do th we come to the conceded fact that these persons lacking the certificate had in fact bee elected, and that the persons who claimed to be the quorum of the two houses were i fact the persons who, in virtue of the election, were entitled to constitute the quorum o both houses.

So that, in any view of the matter which your committee can take, we are of opinic that Mr. Sykes makes no case entitling him to the seat now occupied by Mr. Spencer, ar your committee ask to be discharged from the further consideration of the memorial o Mr. Sykes.

VIEWS OF THE MINORITY.

In the case presented by the memorial of Francis W. Sykes, contesting the election o Hon. George E. Spencer as a Senator from the State of Alabama, the undersigned respec fully submit the following minority report:

By a law of the State of Alabama, the third Monday in November in each year is fixe as the day for the annual meeting of the general assembly of said State, and on the 18t day of November, A. D. 1872, being the third Monday of said month, two separate bodi of men, each claiming to be the legislature of Alabama, assembled at different places i the city of Montgomery and proceeded to organize as such legislature.

One of these bodies, which met in the capitol, or State-house, in said city, on the 10t day of December, 1872, elected the Hon. Francis W. Sykes a Senator in Congress fro the said State for the constitutional term commencing on the 4th day of March, 187 and on the 3d day of the same month the other body, which met at the United Stat court-rooms, also claiming to be the legislature of the State, elected the Hon. George I Spencer a Senator in Congress from said State for the said term.

The two bodies subsequently became merged into one general assembly, under an a

rangement proposed by the Attorney-General of the United States. The organization of the fusion legislature took place after the election of both Mr. Sykes and Mr. Spencer, and the right of neither the one nor the other depends upon the action of that legislature or anything connected with its history.

Whatever claim either of the persons named may have to a seat in the Senate as a Senator from the State of Alabama rests entirely upon the question whether the body that elected him at the time of such election was in fact the legislature of the State, and not upon anything that took place in the legislative history of the State subsequent to the time of his election. It is admitted that there could be but one lawful general assembly in Alabama, and in order to determine whether Mr. Sykes or Mr. Spencer is entitled to a seat in the Senate, it is necessary to decide which of the two bodies, if either, claiming to have been the general assembly of the State, was in fact the legal legislature and competent to elect a Senator. If either of the bodies, known as the capitol legislature and the court-house legislature, assembled in accordance with the provisions of the constitution and laws of Alabama, it cannot be doubted that such body so assembled in conformity with law was vested exclusively with the legislative power of the State, and was alone competent to elect a Senator to represent the State in Congress. On the other hand, it cannot be maintained, if either of said bodies assembled in violation of law or without authority of law, that such body so meeting, by whatever name it chose to style itself, was clothed with any legislative authority, or had any rightful claim to be regarded, for any purpose, as the general assembly.

These propositions are self-evident, and cannot be questioned or denied. They are too clear to admit of argument, or to need illustration or enforcement. As isolated truths, unconnected with other questions, they would receive the ready assent of not only every member of the Senate but of every man in the country at all familiar with the constitution and laws of Alabama. The undersigned, therefore, deem it proper to refer to such provisions of the constitution and laws of the State of Alabama as bear upon the election of members of the senate and house of representatives—and their organization as legislative bodies—composing the general assembly of the State. The following are some of the provisions of the constitution and laws of said State. Article V, sections 2, 3, and 16, of the constitution:

"SEC. 2. The governor, lieutenant-governor, secretary of state, treasurer, and attorney-general shall hold their office for the term of two years, and the auditor for the term of four years.

"SEC. 3. The returns of every election for the officers named in the preceding section shall be sealed up and transmitted to the seat of government by the returning officers, directed to the presiding officer of the senate, who, during the first week of the session, shall open and publish the same in the presence of a majority of the members of the general assembly; the parson having the highest number of votes shall be declared duly elected; but if two or more shall be highest and equal in votes for the same office, one of them shall be chosen by the joint vote of both houses. Contested elections for executive officers shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

"SEC. 16. The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided, and in case of his absence or impeachment, or when he shall exercise the office of governor, the senate shall choose a president *pro tempore*."

By section 6, Article IV of the constitution of Alabama, the president of the senate and the speaker of the house of representatives remain in office until their successors are elected and qualified, as follows:

"SEC. 6. The house of representatives, when assembled, shall choose a speaker and its other officers; and the senate shall choose a president, in the absence of the lieutenant-governor, and its other officers; each house shall judge of the qualifications, elections, and returns of its own members, but a contested election shall be determined in such manner as shall be directed by law. The president of the senate and the speaker of the house of representatives shall remain in office until their successors are elected and qualified."

By Article VIII of the constitution of Alabama, the house of representatives is declared to consist of one hundred members, apportioned among, and elected from, the counties of the State as directed in said article.

The senate consists of thirty-three members, elected by the voters from the senatorial districts, as directed in said article; and these two bodies constitute the general assembly of the State, and therein, by section 1 of Article IV of the constitution, is vested the legislative power of the State, as follows:

"SEC. 1. The legislative power of this State shall be vested in a general assembly, which shall consist of a senate and house of representatives."

By act of the general assemby of Alabama, approved 31st December, 1868, entitled

"An act to fix the time of the annual session of the general assembly," the third Monday of November in each year is declared to be the day for the annual assembling of the general assembly.

By section 38 of the revised code of Alabama, which was re-enacted and continued in force by an act approved July 29, 1868, the general assembly is required to convene in the city of Montgomery, as follows:

"The members of the general assembly shall convene in the city of Montgomery on the first day of November in each year, unless that day be Sunday, and if that day be Sunday, then on the next day afterward."

This provision of the law was amended so as to require the general assembly to meet on the third Monday of November, as before stated.

By the act of the general assembly of Alabama, approved 13th February, 1850, entitled "An act supplemental to an act making appropriations to establish the State-house at Montgomery," and by the original act approved 11th February, 1850, the State of Alabama provided for the erection of the present capitol, or State-house, at Montgomery, and construction therein of a hall of the house of representatives and the senate chamber, for the use of the general assembly of this State, and from the time of the removal of the seat of government from Tuscaloosa to Montgomery the two branches of the general assembly have been accustomed to use, for the purposes of their legislative sessions, the hall and chamber provided for them in the capitol now in use, and in that previously standing on the same site; and no other hall or chamber in Montgomery or elsewhere, except for a short period in 1849–'50, during a session of the legislature, when, in consequence of the destruction of the State-house by fire, the general assembly, by the concurrent action of the two houses, held their sessions in another building in Montgomery.

By act of the general assembly of Alabama, approved October 8, 1868, entitled "An act to regulate elections in this State," it is provided (section 7) that the State senators shall be elected on the first Tuesday after the first Monday of November, 1872, and every four years thereafter; in section 6, that representatives in the general assembly shall be elected on the first Tuesday after the first Monday in November, 1870, and every two years thereafter.

This act further provides as follows:

"SEC. 33. *Be it further enacted*, That one of the inspectors must number each ballot with the same number as the name of the voter on the poll-list, and the ballot must then, without being opened or examined, be deposited in the proper ballot-box.

"SEC. 34. *Be it further enacted*, That there shall be no challenging of electors appearing to vote at any election hereafter held in this State, and any registered voter appearing to vote at any election in this State shall be allowed to do so without question challenge, or objection by any person; and any person who questions, challenges, or objects, or who unlawfully hinders or delays any person offering to vote, shall be guilty of a misdemeanor, and, on conviction, shall be fined five hundred dollars, and, on failure to pay the same, shall be imprisoned in the county jail for six months.

"SEC. 35. *Be it further enacted*, That it shall be the duty of the inspectors of all elections in the election precincts, immediately on the closing of the polls, to count out the votes that have been polled, and, after so doing, to promptly certify the poll-list, seal up the boxes containing the ballots and poll-list, and deliver them to the returning officer, who shall deliver such sealed boxes to the judge of probate within forty-eight hours after they may be delivered to him, and take a receipt from the judge of probate for such sealed ballot-boxes.

"SEC. 36. *Be it further enacted*, That judges of probate, sheriffs, and clerks of the circuit court, or any two of them, of the several counties, are hereby constituted a board of supervisors of elections in and for their respective counties; and it shall be the duty of said board of supervisors to open, compare, and count the ballots cast at all elections.

"SEC. 37. *Be it further enacted*, That it shall be the duty of the board of supervisors of elections, upon good and sufficent evidence that fraud had been perpetrated, or unlawful or wrongful means resorted to to prevent electors from freely and fearlessly casting their ballots, to reject such illegal or fraudulent votes cast at any of such polling places, which rejection, so made as aforesaid, shall be final, unless appeal is taken within ten days to the probate court; and in case of a tie for any county officer, the board of supervisors shall decide.

"SEC. 38. *Be it further enacted*, That it shall be the duty of the board of supervisors, within five days from the date of receiving the sealed boxes and certificates of the number of votes cast at each polling place from the inspectors, to make certificates, on blanks furnished by the secretary of state, of the exact number of votes cast in their county for each person, stating the office such person is voted for, and forward them, excepting for governor, lieutenant-governor, secretary of state, auditor, treasurer, and attorney-general, to the secretary of state, who shall, after such returns have been duly examined by

ry of state, be filed as other public papers required to be kept in his office, ɔe subject to the inspection of any elector of this State.

9. *Be it further enacted*, That the board of supervisors shall forward a certified lection for governor, lieutenant-governor, secretary of state, auditor, treasurer, ey-general to the presiding officer of the senate at least thirty days before the for the meeting of the next general assembly.

0. *Be it further enacted*, That it shall be the duty of the presiding officer of the hin five days after the assembling of the general assembly, in the presence of a f the members of the general assembly, to open the returns and proclaim the uch election, after which they shall be filed in the office of secretary of state, l by section 37 of this act.

1. *Be it further enacted*, That it shall be the duty of the secretary of state to ɔm time to time the board of county supervisors with all necessary blanks upon nake election returns.

2. *Be it further enacted*, That it shall be the duty of the secretary of state to rtificates of election to such persons as may be ascertained to be elected to any is State, addressed to the board of supervisors, at the court-house of the county uch person returned as elected may reside, within ten days after receiving such election from the supervising board of the county; and it shall be the duty of l of supervisors to forward said election certificates to the persons entitled

g these provisions of the constitution and laws of Alabama to the respective ons known as the capitol and court-house legislatures, we are not left in doubt h of the two bodies was the lawful general assembly.

lersigned have no hesitation in declaring it as their opinion that the senate and epresentatives which met at the capitol and elected Mr. Sykes a Senator from ɔf Alabama were organized in strict compliance with the provisions of the con- nd laws of the State, and, thus organized, constituted the general assembly, vested exclusively with legislative power. To sustain the opinion, we need fer to facts which were admitted before the committee or shown by record evi- e true.

ıance of the act of the general assembly of Alabama, approved October 8, 1868, re referred to, an election for governor, lieutenant-governor, secretary of state, attorney-general, and other State officers, and also for senators and representa- e general assembly was held on the first Tuesday after the first Monday in , 1872, in all the counties in the State. The returns of said election, certified required, were made by the boards of supervisors of election to the secretary ɔd were by him filed in his office. Certificates of election were then issued by ıry of state to the persons shown by said returns to have been elected to the ɪembly, namely, to thirty-three senators and one hundred representatives. The ıe secretary of state in this regard is prescribed by the forty-second section of t of October 8, 1868, as follows:

2. *Be it further enacted*, That it shall be the duty of the secretary of state to rtificates of election to such persons as may be ascertained to be elected to any is State, addressed to the board of supervisors, at the court-house of the county uch person returned as elected may reside, within ten days after receiving such election from the supervising board of the county; and it shall be the duty of l of supervisors to forward said election certificates to the persons entitled

; denied that the election had been held in strict compliance with the provis- w, or that the persons to whom certificates of election were issued had been ıt said election for the offices to which they were respectively certified to have ed. Nor will it be denied that the board of supervisors of elections in the sev- ies of the State had made returns as required by section 38 of the act aforesaid etary of state, showing that the persons to whom certificates of election were tly issued had been elected to the State senate and house of representatives. ese returns the secretary of state had no control other than their custody. He red to receive them and file them in his office, and within ten days to issue cer- ɔ the persons shown thereby to have been elected. His duty was purely minis- enforced by penalties prescribed by law.

gestion has been made that the secretary of state, in issuing and causing to be certificates of election to the members of the capitol legislature from Barber cted in bad faith, but no evidence was offered to sustain such suggestion, and, e imputation was not pressed in argument before the committee.

bsence of any proof to the contrary, public officers must be presumed to act in in the performance of official duty, and the undersigned know of no reason for ɔ this officer the vindication arising from such presumption. He sought the ad-

vice of eminent counsel of both political bodies in reference to his duty in the matter, and acted in accordance with their written instructions in issuing the certificates referred to.

The constitution of Alabama provides, Article IV, section 21, as follows: "The general assembly shall meet annually on such day as may be by law prescribed, and shall not remain in session longer than thirty days, except by vote of two-thirds of each house."

The act of the general assembly of the State hereinbefore referred to, approved December 31, 1868, fixes the time for the annual meeting of the general assembly on the third Monday of November in each year.

Before proceeding to recite the facts connected with the organization of the two houses of the capitol legislature, it may be proper to refer to the following provisions of the constitution of Alabama, showing, among other things, the part to be taken by the lieutenant-governor and the speaker of the last house of representatives in the organization of the two houses of the general assembly of the State, and also that a majority of each house shall constitute a quorum to do business, and that each house "shall judge of the qualifications, elections, and returns of its members."

Article IV, sections 6 and 7, are as follows:

"SEC. 6. The house of representatives, when assembled, shall choose a speaker and its other officers; and the senate shall choose a president, in the absence of the lieutenant-governor, and its other officers; each house shall judge of the qualifications, elections, and returns of its own members, but a contested election shall be determined in such manner as shall be directed by law. The president of the senate and speaker of the house of representatives shall remain in office until their successors are elected and qualified.

"SEC. 7. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide."

Article V, section 16, of the constitution also provides:

"SEC. 16. The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided; and in case of his absence or impeachment, or when he shall exercise the office of governor, the senate shall choose a president *pro tempore*."

Bearing in mind these provisions of the constitution and laws of the State in reference to the meeting and organization of the two houses of the general assembly, let us inquire whether the senate and house of representatives known as the capitol legislature met and organized in conformity therewith.

The journals of the two houses of the capitol legislature, published by authority, show the following facts in common with the organization of the two houses. These facts were not disputed in the argument before the committee.

On the 18th day of November, 1872, being the third Monday of said month, the time prescribed by law for the annual meeting of the general assembly, eighteen persons holding certificates of their election as senators from the secretary of state appeared in the senate chamber in the capitol at Montgomery, and at the hour of 12 o'clock of the day were called to order by Lieutenant-Governor Moren, who was present in conformity with the requirement of the constitution for the purpose of organizing the senate and presiding over its deliberations. The eighteen members present, constituting a quorum of the whole number of senators, exhibited the certificates of their election issued by the secretary of state, enrolled their names, and took the oaths of office administered in due form and proceeded to elect officers, namely, secretary, assistant secretary, and other officers. On the following day another senator appeared in the senate chamber, was qualified, and took his seat in the senate. The oaths of office prescribed by the constitution of Alabama were taken by these nineteen senators before the Hon. J. Q. Smith, one of the judges of the circuit court of the State, and all the proceedings were conducted under the presidency of the lieutenant-governor, who is made the presiding officer of the senate by the constitution. These are the facts connected with the meeting and organization of the senate; let us now inquire into the organization of the house of representatives.

It appears from the journal of the proceedings, and is not disputed, that on the 18th day of November, 1872, being the third Monday of said month, the day fixed by law for the meeting of the legislature, forty-five persons holding the certificates of their election as members of the house of representatives convened in the hall of the house in the capitol at the city of Montgomery, and at the hour of 12 o'clock on that day the house was called to order by John P. Hubbard, speaker of the last house of representatives. A temporary clerk and doorkeeper were appointed, and a call of the house made, when forty-five persons enrolled their names, and, having been duly sworn, took their seats as members of the house. The number present being less than a quorum, an adjournment took place until 12 o'clock the next day, when the house again met. The speaker being in the chair, five additional members having certificates of election appeared, enrolled their names, were duly sworn, and took their seats as members of the house. The whole number of members then present being fifty, one less than a quorum, the house adjourned until 11 o'clock the following day. Pursuant to adjournment, the house again met on

the 20th November, when three other members having certificates as aforesaid appeared and qualified by taking the oaths prescribed by the constitution, and took their seats as members of the body.

Fifty-three members of the house were present on that day, and, being a quorum of the whole number of representatives, proceeded to the election of a speaker and other officers.

Mr. Stone, a member from Pickens, received 51 votes for speaker, and was declared duly and constitutionally elected speaker of the house of representatives by the presiding officer. Mr. Stone then qualified as speaker and entered upon the discharge of the duties of the office. Other officers of the house were elected on the same day, some of them receiving as many as 53 votes, and the house, on the said 20th day of November, thus became fully organized.

After the organization of the house, to wit, on the 25th of November, another member appeared and also qualified and took his seat.

All the proceedings in the organization of the two houses appear to have been orderly, regular, and in strict conformity with the requirements of the constitution and laws of the State. Both houses assembled on the day prescribed by law for the meeting of the general assembly in their respective chambers in the State capitol, set apart and appropriated by the State of Alabama for the use of the respective houses of the general assembly.

The senate was presided over by the lieutenant-governor, and the house of representatives by the speaker of the last house during the whole time of the organization of the respective bodies, and a quorum of members holding certificates of election issued by the secretary of state as required by law were present in each house and duly qualified, and participated in such organization and in the further proceedings of the two bodies.

Both houses of the capitol legislature having organized notified the governor that they were ready to receive any communication he might have to make to the general assembly. The constitution of Alabama, Article V, section 7, makes it the duty of the governor to "communicate at every session by message to the general assembly the condition of the State, and recommend such measures as he shall deem expedient." In performance of this duty, Robert B. Lindsay, then governor of the State, on the 22d day of November, 1872, sent his annual message in writing to the capitol legislature, a copy of which was delivered to each house.

This action of the governor in the performance of a duty imposed by the constitution was an unequivocal recognition by the executive department of the State of the capitol legislature as the lawful general assembly of Alabama, and is entitled to weight in the consideration of the question referred to the committee.

After the organization of the two houses of the capitol legislature, further proceedings were had by those houses to which it may be proper here to advert.

The constitution of the State provides, in Article V, sections 2 and 3, as follows:

"SEC. 2. The governor, lieutenant-governor, secretary of state, treasurer, and attorney-general shall hold their offices for the term of two years, and the auditor for the term of four years.

"SEC. 3. The returns of every election for the offices named in the preceding section shall be sealed up and transmitted to the seat of government by the returning officers, directed to the presiding officer of the senate, who, during the first week of the session, shall open and publish the same in the presence of a majority of the members of the general assembly; the person having the highest number of votes shall be declared duly elected, but if two or more shall be highest and equal in votes for the same office, one of them shall be chosen by the joint vote of both houses. Contested elections for executive officers shall be determined by both houses of the general assembly in such manner as shall be prescribed by law."

For the purpose of complying with these provisions of the constitution, the two houses of the capitol legislature, on the 22d day of November, 1872, under a resolution previously passed, met in the hall of the house of representatives to witness the opening and counting of the returns of the election of the officers named in section 2 above cited. Lieutenant-Governor Moren, the then lieutenant-governor of the State and the presiding officer of the senate, to whom said returns had been directed by the returning officers, in the presence of a majority of the members of the two houses proceeded to open and count the said returns; and on the following day, the opening and counting thereof having been completed, the lieutenant-governor, as presiding officer of the senate, published the result of the election as shown by the count of the returns; and thereupon the Hon. David P. Lewis was declared elected governor and Alexander McKinstry lieutenant-governor of the State, who were duly notified thereof and afterward took the oaths prescribed, and entered upon the discharge of the duties of their respective offices. The election of the other State officers was also duly declared, and said officers afterward entered upon the discharge of the duties of their several offices.

zation of the general assembly as mere matters of form that the supporters of the court-house legislature can attempt to justify its action or claim for it the recognition of the Senate; yet no position could be more untenable, unsound, or irrational. Every provision of the constitution and laws of Alabama relating to the election of members of the legislature might with the same propriety be treated as mere form; the registration of voters, the appointment of inspectors and other officers to conduct the election—the voting by ballot, the keeping of poll-lists, the counting of the votes, in short, everything required by the constitution and laws of Alabama for guarding the election and ascertaining the result might be dispensed with as matters of form, for the same reasons that you can dispense with the returns and certificates required to be made by the inspectors and boards of supervisors of election, and the certificates in conformity therewith required to be issued by the secretary of state.

The fact that provision is made by law for contesting the seats of members of the legislature seated upon the returns and certificates referred to by persons claiming to have been elected, is a conclusive argument against the position that said returns and certificates are matters of form only, and may be disregarded at pleasure. The law attaches to said certificates such importance that a contest is required to show that they are not correct. This is the effect given to such returns and certificates by the laws of Alabama.

While, however, these provisions of law for contesting the right of members of the legislature admitted to seats upon the evidence of such returns and certificates demonstrate that they are not matters of form merely, they furnished the remedy, and the only legal remedy, for opposing candidates who claimed to have been elected to the general assembly.

So far as the court-house members who held certificates of election were concerned there was no necessity for a contest; they had the right, and would have been admitted to seats in the capitol legislature upon the presentation of such certificates; and, had there been a majority of Republican members who had certificates of election, they doubtless would have been present at the capitol and taken their seats as members. The fact that they were in a minority could not release them from the obligation of obeying law or justify their contempt of its provisions. Every sentiment of patriotism and every consideration arising from citizenship, no less than the duty imposed by the position to which they had been elected, united in demanding their obedience to the laws of their State. In refusing that obedience, and disobeying the fundamental and statute laws of Alabama, they assumed the attitude of revolutionists, and put in jeopardy the peace and good order of society.

No party exigency can excuse such perfidy or condone its criminality. It was an utter disregard of law which this Senate cannot properly indorse by recognizing the court-house assemblage as the legislature of the State.

Such proceedings would have met with stern rebuke in the earlier days of the Republic, and can only now find countenance and sympathy from that toleration of lawlessness which looks with indifference, if not approval, upon the overthrow of legitimate government and the substitution of a despotism supported by Federal power in one of the States of this Union.

The refusal to give to Mr. Sykes the seat which he claims in this body would be a declaration on the part of the Senate that the legislature that elected him was not the lawful general assembly of the State; that the constitutional provision requiring the lieutenant-governor to preside in the senate has no meaning; that no importance attaches to the returns made by the supervisors of elections as required by law, or to the certificates of election issued to members by the secretary of state in conformity with such returns; that the legal ascertainment of who constitute the members of the respective houses of the legislature and every requirement of law for such ascertainment were unnecessary and might be dispensed with in the organization of the two houses; that no significance attaches to the provisions of law for the erection of a State capitol and the appropriation of halls therein for the senate and house of representatives; in short, that the observance of constitutional and legal requirements is wholly unnecessary and not essential to the legal existence of legislative bodies in the State of Alabama. Mr. Sykes was elected by a legislature met in pursuance of every requirement of law. No one disputes that the lieutenant-governor presided in the senate and the speaker of the last house of representatives in the house at the capitol. No one denies that the members of the two houses assembled at the proper time and in the halls set apart for the use of the respective houses of the legislature. No one denies that every member of each house produced the certificate of his election, issued by the secretary of state in conformity with the returns made to him by the supervisor of elections. No one denies that a quorum admitted to seats upon such certificates were present in both houses, and participated in their proceedings and in the joint convention that elected Mr. Sykes to the Senate. With these requirements fulfilled by the capitol legislature, it would be impossible to put any other construction on the rejection of Mr. Sykes than that the Senate does not deem compliance with law in the

organization of the legislature of the State essential to its legal existence or the validity of its acts. On the other hand, the retention of Mr. Spencer, elected by a body of men assembled without warrant of law, at a place not designated for the meeting of the general assembly, with less than a quorum of persons in either house, holding certificates of election issued in pursuance of law and presided over by persons other than those designated in the constitution as the presiding officers of the two houses of the legislature, would be an unequivocal declaration on the part of the Senate of the United States that a revolutionary body of men may constitute itself the legislature of Alabama, and perform the functions appertaining to the general assembly of the State.

The enunciation of such a doctrine, either expressly or by implication, arising from the retention of Mr. Spencer in the position he occupies, would subject the Senate to the suspicion in the popular mind of being governed in its decision by party predilection. Unjust as such a suspicion might be, the preservation of its own dignity demands that no occasion shall occur from which it could possibly arise. No higher duty devolves upon the Senate than the preservation of its own character from reproach. Within the last few years it has suffered in public esteem from causes which it is unnecessary to name, and it is to be hoped nothing in connection with this contest may occur to weaken its claim to the respect and confidence of the country.

The decision of this contest against Mr. Sykes, elected by a legislature assembled with all the forms of law, and in favor of Mr. Spencer, elected by a legislature convened in contempt of law, would encourage faction and invite to revolution in every State of the Union in which political parties are about equal in numerical strength. The defeated party, basing its action on allegations of fraud, instead of pursuing the remedy pointed out by law, will seek the correction of its real or fancied wrongs by imitating the example of the court-house legislature of Alabama. For the justification of its action, it could point to the indorsement by the Senate of the proceedings of that revolutionary body. By recognizing the capitol legislature, however, and deciding the contest in favor of Mr. Sykes, the Senate would administer a just rebuke to lawlessness, promote public order and morality, and enforce the observance of law in the organization of legislative bodies throughout the land.

Much more important considerations are involved in this contest than the mere question which of the persons claiming shall be allowed to sit as a member in this body. If that was the single question to be decided, it would be worthy of the most careful and deliberate action of the Senate. Private rights ought not to be hastily or inconsiderately determined, but should be as carefully guarded and preserved by the decision of this body as they would be by the judgment of the highest legal tribunal in the land. Important, however, as the question of personal rights may be, it dwindles into insignificance in view of the graver consequences to result from the determination of this contest by the Senate. Presented in this issue is the broad question whether, in one of the States of this Union, legitimate legislative government, sanctioned by every requirement of the constitution and laws of the State, can be superseded by faction, and a revolutionary body, met without the forms and in contempt of law, receive the approval and sanction of the Senate as the lawful general assembly of the State.

This is the grave question which must be decided in the determination of the contest now before the Senate. Upon that decision may depend, in no small degree, the preservation of future peace and harmony, not only in Alabama, but in every State of the Union. In disposing of this case, no encouragement should be given, directly or indirectly, to a disregard of law; but in its action in the matter before it the Senate should teach the wholesome lesson that a due observance of the provisions of law is alike the duty and interest of every citizen, whether acting in a private or public capacity, and that no attempt to ignore or evade its requirements can meet the approval or be sustained by the American Senate.

The State of Alabama has a right to be represented on this floor by a Senator chosen by the legislature of the State organized in conformity with the requirements of her constitution and laws. That right would be secured in the admission of Mr. Sykes. The undersigned therefore respectfully submit the following resolution and recommend its adoption:

Resolved, That Francis W. Sykes, having been duly and legally elected a Senator from the State of Alabama for the constitutional term commencing March 4, 1873, is entitled to the seat in this body now held by the Hon. George E. Spencer.

ELI SAULSBURY.
WILLIAM T. HAMILTON.

WEDNESDAY, *May* 27, 1874.

On motion by Mr. Hamilton, of Maryland, the Senate proceeded to consider the resolution reported by the Committee on Privileges and Elections, to whom was referred the memorial of Francis W. Sykes, claiming a seat in the Senate as Senator from the State of Alabama, viz:

"*Resolved*, That the Committee on Privileges and Elections be discharged from the further consideration of the memorial of Francis W. Sykes."

An amendment to the resolution having been proposed by Mr. Hamilton, of Maryland,

Pending debate,

On motion by Mr. Conkling, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 4287–4290 of the Congressional Record, vol. ii, part 5. Mr. Hamilton's speech is found on pages 323–331 of the Appendix, vol. ii, part 6.]

THURSDAY, *May* 28, 1874.

The President *pro tempore* announced that the morning hour had expired and called up the unfinished business of the Senate at its adjournment yesterday, viz, the resolution reported by the Committee on Privileges and Elections, to whom was referred the memorial of Francis W. Sykes, claiming a seat in the Senate as a Senator from the State of Alabama, as follows:

"*Resolved*, That the Committee on Privileges and Elections be discharged from the further consideration of the memorial of Francis W. Sykes."

The Senate resumed the consideration of the said resolution.

On motion by Mr. Hamilton, of Maryland, to amend the resolution by striking out all after the word "resolved" and in lieu thereof inserting—

"That the Hon. George E. Spencer, not having been elected a Senator from the State of Alabama by the lawful legislature of that State, is not entitled to a seat in this body,"

After debate,

It was determined in the negative—yeas 11, nays 33.

On motion by Mr. Hamilton, of Maryland, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bayard, Bogy, Davis, Hager, Hamilton of Maryland, Hamilton of Texas, Johnston, McCreery, Merrimon, Ransom, and Saulsbury.

Those who voted in the negative are Messrs. Alcorn, Anthony, Boreman, Carpenter, Chandler, Clayton, Conkling, Conover, Dorsey, Ferry of Michigan, Flanagan, Frelinghuysen, Gilbert, Harvey, Howe, Ingalls, Logan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Patterson, Pratt, Ramsey, Scott, Sherman, Sprague, Stewart, Wadleigh, Washburn, West, and Wright.

So the amendment was not agreed to.

On motion by Mr. Hamilton, of Maryland, to amend the resolution by striking out all after "resolved" and in lieu thereof inserting—

"That Francis W. Sykes, having been duly and legally elected a Senator from the State of Alabama for the constitutional term commencing March 4, 1873, is entitled to the seat in this body now held by the Hon. George E. Spencer,"

It was determined in the negative.

The question recurring on the resolution reported by the Committee on Privileges and Elections, viz:

"*Resolved*, That the Committee on Privileges and Elections be discharged from the further consideration of the memorial of Francis W. Sykes,"

On the question to agree thereto, it was determined in the affirmative.

[The debate is found on pages 4325–4330 of the Congressional Record, vol. ii, part 5.]

COMPENSATION OF MR. SYKES.

[First session of the Forty-third Congress.]

THURSDAY, *May* 28, 1874.

Mr. Hamilton, of Maryland, submitted the following resolution; which was referred to the Committee on Privileges and Elections:

"*Resolved*, That Francis W. Sykes, late contestant for a seat in this body from the State of Alabama, be allowed the salary of a Senator from the 4th of March, 1873, up to the 28th day of March, 1874, and one mileage each way."

FRIDAY, *June* 5, 1874.

On motion by Mr. Hamilton, of Maryland, the Senate proceeded to consider the resolution submitted by him on the 29th of May last, directing the Secretary of the Senate to pay certain compensation to Francis W. Sykes, late claimant of a seat in the Senate as a Senator from the State of Alabama; and

An amendment having been proposed by Mr. Carpenter,

Pending debate,

Ordered, That the further consideration of the said resolution be postponed to tomorrow.

[The debate is found on pages 4596–4598 of the Congressional Record, vol. ii, part 5.]

WEDNESDAY, *June* 10, 1874.

ı by Mr. Hamilton, of Maryland, the Senate resumed the consideration of
ɔn reported by him from the Committee on Privileges and Elections, on the
, directing the Secretary of the Senate to pay certain compensation to Francis
ı a claimant to a seat in the Senate as a Senator from the State of Alabama.
lment having been proposed by Mr. Carpenter, and an amendment to the
having been proposed by Mr. Hamilton, of Maryland,
ıte,
That the further consideration of the said resolution be postponed to to-

ıte is found on pages 4798–4800 of the Congressional Record, vol. ii, part 5.]

THURSDAY, *June* 11, 1874.

ı by Mr. Hamilton, of Maryland, the Senate resumed the consideration of
ɔn reported by him from the Committee on Privileges and Elections, on the
st, viz:
, That the Secretary of the Senate be, and he is hereby, authorized and di-
y to Francis W. Sykes, late contestant from the State of Alabama, out of the
ns for compensation and mileage for Senators, the sum of $8,374.80, being
a Senator from the 4th day of March, 1873, to the 28th day of May, 1874,

ı by Mr. Carpenter to amend the resolution in lines 4 and 5 by striking out
being the salary of a Senator from the 4th day of March, 1873, to the 28th
1874, inclusive," and in lieu thereof inserting "$3,000;"
ı by Mr. Hamilton, of Maryland, to amend the amendment by striking out
nd in lieu thereof inserting "$6,500,"
ıte, it was determined in the negative—yeas 25, nays 32.
ı by Mr. Hamilton, of Maryland, the yeas and nays being desired by one-
Senators present,
voted in the affirmative are Messrs. Alcorn, Anthony Bayard, Bogy, Conover,
is, Goldthwaite, Gordon, Hager, Hamilton of Maryland, Johnston, Kelly,
eery, Merrimon, Morton, Norwood, Patterson, Ramsey, Ransom, Saulsbury,
ırman, and Tipton.
o voted in the negative are Messrs. Allison, Boreman, Boutwell, Bucking-
on, Carpenter, Chandler, Conkling, Cragin, Edmunds, Ferry of Michigan,
en, Gilbert, Hamilton of Texas, Hamlin, Harvey, Howe, Ingalls, Mitchell,
laine, Morrill of Vermont, Oglesby, Pease, Pratt, Sargent, Sherman, Sprague,
dleigh, Washburn, Windom, and Wright.
endment to the amendment was not agreed to.
ion recurring on the amendment of Mr. Carpenter,
That the further consideration of the said resolution be postponed to to-

ıte is found on pages 4850–4852 of the Congressional Record, vol. ii, part 5.]

[Second session of the Forty-third Congress.]

WEDNESDAY, *December* 23, 1874.

ı by Mr. Hamilton, of Maryland,
'hat the resolution directing the Secretary to pay Francis W. Sykes the sal-
ıtor while contesting a seat in the Senate be recommitted to the Committee
ı and Elections.

WEDNESDAY, *March* 3, 1875.

ton, of Maryland, from the Committee on Privileges and Elections, reported
ɡ resolution:
That the Secretary of the Senate be, and he is hereby, directed and author-
o Francis W. Sykes, late contestant from the State of Alabama, the pay and
Senator from the 4th day of March, 1873, to the 28th day of May, 1874."

[First session of the Forty-fourth Congress.]

THURSDAY, *February* 3, 1876.

ɔury submitted the following resolution; which was referred to the Com-
ivileges and Elections:
That the Secretary of the Senate be, and he is hereby, authorized and di-
y to Francis W. Sykes, late contestant from the State of Alabama, the pay
ɔf a Senator from the 4th day of March, 1873, to the 28th day of May, 1874."

WEDNESDAY, *March* 8, 1876.

Mr. Cooper, from the Committee on Privileges and Elections, to whom was referred the resolution of Mr. Saulsbury, submitted on the 3d of February last, to pay Francis W. Sykes the compensation and mileage of a Senator from the 4th day of March, 1873 to the 28th day of May, 1874, reported it without amendment, and submitted a report (No. 135) thereon.

REPORT OF COMMITTEE.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1876.—Ordered to be printed.

Mr. Cooper, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom was referred Senate resolution No. 10, to pay Francis W. Sykes the compensation and mileage of a Senator from the 4th day of March, 1873, to the 28th day of May, 1874, have had the same under consideration, and submit the following report:

The rule established by the Senate in cases similar to the present one has been uniform. A person applying for a seat in this body by reason of an election by the legislature of a State, although his application has been refused, and another adjudged entitled to the seat, has been paid the amount he would have been entitled to receive if he had been admitted and served the time the contest was pending. The action of the Senate upon such cases has been with such great unanimity as to call for little or no debate. The reasons, therefore, upon which the rule is based can only be surmised. It may be said the person claims his seat in pursuance of an implied duty imposed upon him to the assert the right of his State to be represented in this body, which duty he owes to the public, and that expenses incurred in the performance of a public duty should be paid out of the common treasury.

A proper respect for the action of a State in the choice of a Senator may also justify the rule.

The committee see nothing in the present case to take it out of the general rule; they therefore recommend the passage of the resolution.

SECOND INVESTIGATION OF MR. SPENCER'S ELECTION.

THURSDAY, *December* 16, 1875.

Mr. Spencer rose to a question of privilege, and, having addressed the Senate upon the subject of certain charges made in connection with his election as a Senator, submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Committee on Privileges and Elections are hereby instructed to investigate into and inquire whether in the election of George E. Spencer as a Senator in Congress from the State of Alabama there were used, or caused to be used and employed, corrupt means or corrupt practices to secure his election to the seat he now holds; and that said committee be empowered to administer oaths, to send for persons and papers, to take testimony, to employ stenographers and such clerical assistance as they may deem necessary, and to sit during the recess of Congress, if considered advisable, and to report the result of their investigations as soon as practicable."

[The debate is found on pages 232, 233 of the Congressional Record, vol. iv, part 1.

TUESDAY, *January* 18, 1876.

Mr. Goldthwaite presented a report of the joint committee of the general assembly of Alabama, accompanied by a memorial and testimony, in regard to the alleged election of George E. Spencer as a Senator from that State; which was referred to the Committee on Privileges and Elections.

MONDAY, *January* 24, 1876.

Mr. Goldthwaite presented a memorial of the general assembly of the State of Alabama, praying that the seat in the United States Senate now held by George E. Spencer may be declared vacant; which was referred to the Committee on Privileges and Elections.

FRIDAY, *March* 3, 1876.

Mr. Morton submitted the following resolution; which was read the first and second times by unanimous consent:

"*Resolved*, That the sum of $15,000 be appropriated from the contingent fund of the

Senate to defray the expenses of the investigation into the facts attending the election of the Hon. George E. Spencer as a member of this body by the legislature of Alabama; to be disbursed on the warrant of the chairman of the Committee on Privileges and Elections."

The Senate proceeded to consider the said resolution as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read the third time by unanimous consent.

Resolved, That it pass.

WEDNESDAY, *May* 3, 1876.

Mr. Morton submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That 300 copies of the testimony taken in the investigation of the charges against George E. Spencer be printed for the use of the Senate."

SATURDAY, *May* 20, 1876.

Mr. Morton, from the Committee on Privileges and Elections, who were instructed by a resolution of the Senate of the 16th December last to investigate into and inquire whether in the election of George E. Spencer as a Senator in Congress from the State of Alabama there were used and employed corrupt means or corrupt practices to secure his seat he now holds; and to which committee was referred the memorial of the legislature of Alabama charging that George E. Spencer had not been legally elected a Senator from that State, accompanied by a copy of certain testimony purporting to have been taken by a committee of said legislature, and a certain report of said committee thereon, submitted a report (No. 331) thereon, accompanied by the testimony taken by said Committee on Privileges and Elections, and a request that the said committee be discharged from the further consideration of the subject.

Mr. Saulsbury asked and obtained leave of the Senate to submit, on some subsequent day, the views* of the minority of the Committee on Privileges and Elections on the foregoing subject.

REPORT OF COMMITTEE.†

[The committee consisted of Messrs. Morton (chairman), Logan, Mitchell, Wadleigh, Cameron of Wisconsin, McMillan, Saulsbury, Merrimon, and Cooper.]

IN THE SENATE OF THE UNITED STATES.

MAY 20, 1876.—Ordered to be printed.

Mr. Morton, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections beg leave to submit the following report:

On the 16th day of December, 1875, the Senate adopted the following resolution:

"*Resolved*, That the Committee on Privileges and Elections be hereby instructed to investigate into and inquire whether in the election of George E. Spencer as a Senator in Congress from the State of Alabama there were used and employed corrupt means or corrupt practices to secure his election to the seat he now holds; and that the said committee be empowered to administer oaths, to send for persons and papers, to take testimony, to employ stenographers and such clerical assistance as they may deem necessary, and to sit during the recess of Congress if considered advisable, and to report the result of their investigations as soon as possible."

Afterward a memorial from the legislature of Alabama, charging that Mr. Spencer had not been duly and legally elected, which was accompanied by a copy of the testimony purporting to have been taken by a committee of that legislature, and a report of the committee upon the testimony, was also referred to the Committee on Privileges and Elections.

This testimony was *ex parte* in its character, very much of it hearsay, and could not be received by the committee as evidence.

The question whether Mr. Spencer was elected by the lawful legislature of Alabama, raised in the memorial referred to, and in the specifications filed before the committee by the counsel, Mr. Morgan, who represented the State of Alabama, was considered by a majority of the committee to have been fully settled in the contest for the seat occupied by Mr. Spencer, before made, in the Senate by Mr. Sykes.

The question in that contest was whether what was known as the court-house legis-

*The views of the minority referred to were never presented.

†Taken from Senate Reports, 44th Cong., 1st sess., No. 331. The testimony accompanying the report is here omitted.

lature, by which Mr. Spencer was elected, or the capitol legislature, by which Mr. Sykes was elected, was the lawful legislature of Alabama. After full consideration and argument of counsel, it was determined by the committee and afterward by the Senate that the court-house legislature was the lawful one, and that Mr. Spencer and not Mr. Sykes was entitled to the seat.

The question having been definitely settled, it was considered by the committee that it was not competent for the committee or the Senate to reopen it, and that it must be treated as *res adjudicata*.

Upon the other branch of the inquiry, as to whether Mr. Spencer, or his friends, had been guilty of bribery, corruption, or other unlawful practices in procuring his election, the committee made faithful and diligent inquiry. Mr. Morgan, counsel for the accusers, subpœnaed and examined many witnesses, and, after the testimony was over, supported the charge against Mr. Spencer by a lengthy argument.

Those charges were not proven in any respect. No witness testified that Mr. Spencer had given, directly or indirectly, or offered to give money, or anything of value, in consideration of votes, or support, in the Alabama legislature; nor was it shown that any of his friends had done so. Some hearsay testimony was offered to the effect that certain persons had said that they had received money in consideration for voting for Mr. Spencer for the Senate; but this testimony was ruled out by the committee. The persons alleged to have made these statements were competent witnesses, but were not produced, nor was it proven that any money had been paid to them for such a purpose by anybody, whether a known friend of Mr. Spencer or not.

The counsel for the accusers complain strongly of the rejection of such testimony; but its illegality and worthless character were too plain to require argument, and had it been admitted it might have contributed to make some scandal, but would have proved nothing. Attempts were made to offer the hearsay statements against Mr. Spencer of persons who were not shown to have been engaged with him in any conspiracy to procure his election by corruption or undue means, and by whose statements made in his absence he could not be bound by any known principle of law, which were also rejected by the committee.

While hearsay evidence was thus excluded, the door was thrown open widely to prove the payment of money by any person to any member of the legislature, or to be used with the legislature, to procure Mr. Spencer's election, by any person, whether such person was shown to be a friend of Mr. Spencer or not.

The committee deem it unnecessary to go into the full details of the case, and having thus given the general result, beg leave to be discharged from the further consideration of the resolution and memorial, and herewith submit copies of the testimony taken before the committee.

REIMBURSEMENT OF MR. SPENCER'S EXPENSES.

THURSDAY, *December* 18, 1884.

Mr. Hoar presented a petition of George E. Spencer, late a Senator from the State of Alabama, praying to be reimbursed the amount necessarily incurred by him in defending his title to a seat in the Senate; which was referred to the Committee on Privileges and Elections.

FRIDAY, *February* 13, 1885.

Mr. Hoar, from the Committee on Privileges and Elections, reported the following resolution for consideration:

"*Resolved*, That there be allowed and paid out of the contingent fund of the Senate to George E. Spencer, formerly a Senator from the State of Alabama, the sum of $7,132, being the amount actually and necessarily expended by him in maintaining his title to his seat."

FRIDAY, *February* 20, 1885.

On motion by Mr. Hoar, the Senate proceeded to consider the resolution given above, and it was

Ordered, That it be referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

TUESDAY, *February* 24, 1885.

Mr. Jones, of Nevada, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the resolution (given above), reported it without amendment.

TUESDAY, *March* 3, 1885.

On motion by Mr. Jones, of Nevada, the Senate proceeded to consider the resolution (given above), and

Resolved, That the Senate agree thereto.

[Special session of Senate, March, 1877.]

L. Q. C. LAMAR,

from Mississippi from March 6, 1877, *till he resigned, March* 9, 1885.

r was first elected for the term beginning March 4, 1877. Objection being made March e oaths of office being administered to him, his credentials were laid on the table. The ıy, the credentials were taken from the table after debate, and he was sworn. It appears bates that the objections to the admission of Mr. Lamar were upon the ground that the ernment in Mississippi was a usurpation." (An inquiry into alleged frauds in the Mississippi in November, 1875, had been made by a select committee and a report thereon › the Senate August 7, 1876.) Most Senators proceeded upon the ground that Mr. Lamar a *prima facie* title to the seat and should be sworn, though it was claimed that this rule n followed in the case of Mr. Pinchback, of Louisiana.
ry of the case here given consists of a transcript of the proceedings of the Senate relating enate Journal, 2d sess. 44th Cong. (special session, March, 1877).
e is found on pages 5-15 of the Congressional Record, vol. vi.

SATURDAY, *March* 3, 1877.

orn presented the credentials of L. Q. C. Lamar, elected a Senator by the legis- he State of Mississippi for the term of six years commencing March 4, 1877; e read.

MONDAY, *March* 5, 1877.

hony submitted the following resolution; which was considered by unanimous ıd agreed to:
ed, That the credentials of Senators-elect in all disputed or contested cases ıe table until to-morrow."
n under the foregoing resolution having been made to the oaths of office being ed to Mr. L. Q. C. Lamar from Mississippi, whose credentials were heretofore

That his credentials lie on the table.

TUESDAY, *March* 6, 1877.

llace submitted the following resolution for consideration:
d, That the credentials of L. Q. C. Lamar, Senator-elect from the State of i, be taken from the table and that he be sworn."
ncer called for the reading of a report made to the Senate at the first session of fourth Congress, by the Committee on Privileges and Elections, on the subject lections in the State of Mississippi.
llace having objected to the reading of the said report,
e-President submitted the question to the Senate, Shall the report be read? determined in the negative.
stion recurring on the resolution of Mr. Wallace,
ion by Mr. Spencer to amend the resolution by striking out, in the last line e words "that he be sworn," and in lieu thereof inserting "be referred to ittee on Privileges and Elections when the committee shall be appointed,"
ıuestion to agree thereto,
bate, it was determined in the negative—yeas 1, nays 58.
on by Mr. Spencer, the yeas and nays being desired by one-fifth of the Sena- ıt,
ator who voted in the affirmative is Mr. Wadleigh.
ho voted in the negative are Messrs. Allison, Anthony, Bailey, Barnum, Bay- Blaine, Bogy, Booth, Bruce, Burnside, Cameron of Pennsylvania, Chaffee, y, Cockrell, Coke, Conkling, Conover, Davis of Illinois, Davis of West Virginia, ınnis, Eaton, Garland, Gordon, Harris, Hereford, Hill, Hoar, Howe, Johnston, lorida, Jones of Nevada, Kernan Kirkwood, McCreery, McDonald, McMillan, ı, Maxey, Mitchell, Morton, Oglesby, Paddock, Patterson, Plumb, Randolph, Rollins, Saulsbury, Saunders, Sharon, Sherman, Teller, Thurman, Wallace, d Withers.
mendment was not agreed to.
stion recurring on the resolution of Mr. Wallace,
ıuestion to agree thereto,
bate, it was determined in the affirmative—yeas 57, nays 1.

On motion by Mr. Spencer, the yeas and nays being desired by one-fifth tors present,

Those who voted in the affirmative are Messrs. Allison, Anthony, Bail Bayard, Beck, Blaine, Bogy, Booth, Bruce, Burnside, Chaffee, Christiancy, Co Conkling, Conover, Davis of Illinois, Davis of West Virginia, Dawes, Dennis, land, Gordon, Harris, Hereford, Hill, Hoar, Howe, Johnston, Jones of Flor Nevada, Kernan, Kirkwood, McCréery, McDonald, McMillan, McPherson, M ell, Morrill, Morton, Oglesby, Paddock, Patterson, Plumb, Randolph, Ra bury, Saunders, Sharon, Sherman, Teller, Thurman, Wallace, Whyte, and

The Senator who voted in the negative is Mr. Wadleigh.

So it was

Resolved, That the credentials of L. Q. C. Lamar, Senator-elect from the S sissippi, be taken from the table and that he be sworn.

Whereupon

The oaths prescribed by law were administered to Mr. Lamar by the Vic and he took his seat in the Senate.

[Special session of the Senate, March, 1877.]

JOHN T. MORGAN,

n Alabama from March 8, 1877. [*December* 1, 1885, *still holding seat.*]

as first elected for the term beginning March 4, 1877. Objection being made March
hs of office being administered to him, his credentials were laid on the table. The
taken from the table March 8, after debate, and he was sworn. It appears from the
ction was made to his admission on the ground that the legislature elected in August,
cting Mr. Morgan—had been fraudulently elected, and were not representatives of
investigation into the Alabama elections of 1876 had been made by the Commit-
s and Elections, and a report thereon submitted to the Senate March 3, 1877.) It
that the Senate proceeded upon the ground that Mr. Morgan had at least a *prima*
seat.
the case here given consists of a transcript of the proceedings of the Senate relat-
nate Journal, 44th Cong., 2d sess. (special session, March, 1877).
e found on pages 24-31 of the Congressional Record, vol. vi.

TUESDAY, *February* 27, 1877.

presented the credentials of John T. Morgan, elected a Senator by the
labama for the term of six years commencing March 4, 1877; which were

MONDAY, *March* 5, 1877.

r submitted the following resolution; which was considered by unanimous
greed to:
hat the credentials of Senators-elect in all disputed or contested cases lie
until to-morrow."
der the foregoing resolution having been made to the oaths of office being
Mr. John T. Morgan, from Alabama, whose credentials were heretofore

at the credentials lie on the table.

WEDNESDAY, *March* 7, 1877.

submitted the following resolution for consideration:
hat the credentials of John T. Morgan, Senator-elect from the State of
aken from the table, and that he be sworn."
by Mr. Morrill, the Senate proceeded to the consideration of executive

THURSDAY, *March* 8, 1877.

esumed the consideration of the resolution yesterday submitted by Mr.

hat the credentials of John T. Morgan, Senator-elect from the State of
aken from the table, and that he be sworn."
by Mr. Spencer, to amend the resolution by striking out, in the last line
rds "he be sworn," and in lieu thereof inserting "they be referred to the
Privileges and Elections when appointed,"
, it was determined in the negative.
recurring on the resolution of Mr. Bayard, it was agreed to, as follows:
That the credentials of John T. Morgan, Senator-elect from the State of
aken from the table, and that he be sworn."

appeared at the bar of the Senate, and the oaths prescribed by law having
ered to Mr. Morgan by the Vice-President, he took his seat in the Senate.

[Special session of Senate, March, 1877, and Forty-fifth Congress.]

DAVID T. CORBIN vs. M. C. BUTLER,

of South Carolina.

February 13, 1877, the credentials of Mr. Corbin, elected for the term beginning March 4, 1877, were presented, and March 2, the credentials of Mr. Butler, elected for the same term, were presented. March 7, the Senate resolved that both credentials be referred to the Committee on Privileges and Elections when appointed. November 26, the Senate resolved, after debate, that the committee be discharged from the consideration of Mr. Butler's credentials. November 30, Mr. Butler was sworn as a Senator. February 4, 1879, the committee reported that at the State election held in November, 1876, one hundred and twenty-four persons were to be voted for as members of the house of representatives; that the board of State convassers declared that only one hundred and sixteen were duly elected; that fifty-nine of these met at the State-house November 28, and organized, being known as the Mackey house; that the other fifty-seven of those elected, together with eight persons having no certificates of election, met on the same day in a private hall and pretended to organize, being known as the Wallace house; that the Mackey house and an unquestioned senate elected Mr. Corbin December 12, 1876, whose credentials were signed by Governor Chamberlain, who was, until December 14, 1876, the unquestioned governor; that the Wallace house, with a minority of the senate, elected Mr. Butler December 19, 1876, whose credentials were signed by Governor Hampton. The committee reported the following conclusions: The Mackey house constituted the lawful house. Though composed of less than a majority of all the possible members of that body (one hundred and twenty-four) there was a "quorum to do business," which consisted of a "majority of the members chosen"—a majority of all those holding lawful certificates of election. Mr. Corbin was legally elected December 12, 1876, and there was no vacancy when Mr. Butler was elected. The Wallace house had no quorum when it organized, and was never a lawful body. The Wallace house had no senate to recognize it. The committee submitted a resolution that Mr. Corbin was duly elected and entitled to have the oath of office administered to him. A minority report held that the decision of the Senate, November 30, 1877, admitting Mr. Butler made the question *res adjudicata;* further, that fifty-nine members did not constitute a legal quorum under the constitution and laws of South Carolina, so that the Mackey house was not the legal house. A motion was made, February 25, 1879, that the Senate proceed to the consideration of the resolution reported by the committee, and it was determined in the negative. February 28, the Vice-President laid before the Senate a letter from Mr. Corbin, withdrawing his claim. No further action was taken by the Senate. Messrs. Corbin and Butler were allowed reimbursement of the necessary expenses of the contest.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journal, 2d sess. 44th Cong., and 45th Cong., and the report of the committee from Senate Reports, 45th Cong., 3d sess, No. 707.

Special references to the debates of each day are inserted below.

TUESDAY, *February* 13, 1877.

Mr. Patterson presented the credentials of David T. Corbin, elected a Senator by the legislature of the State of South Carolina for the term of six years commencing March 4, 1877; which were read.

FRIDAY, *March* 2, 1877.

Mr. Ransom presented the credentials of M. C. Butler, certified by Wade Hampton, as governor of South Carolina, to have been elected a United States Senator by the legislature of that State for the term of six years commencing March 4, 1877; which were read.

Ordered, That they lie on the table.

[Special session of Senate, March, 1877.]

WEDNESDAY, *March* 7, 1877.

Mr. Patterson submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the credentials of David T. Corbin and M. C. Butler, each claiming to be a Senator from the State of South Carolina, lie upon the table until the committees are appointed, and their credentials shall be referred to the Committee on Privileges and Elections."

[First session of the Forty-fifth Congress.]

TUESDAY *November* 20, 1877.

Mr. Thurman submitted the following resolution for consideration:

"*Resolved*, That the Committee on Privileges and Elections be discharged from the further consideration of the credentials of M. C. Butler, of South Carolina."

[The debate is found on pages 556-559 of the Congressional Record, vol. vi.]

WEDNESDAY, *November* 21, 1877.

On motion by Mr. Thurman, the Senate proceeded to consider the resolution yesterday submitted by him to discharge the Committee on Privileges and Elections from the further consideration of the credentials of M. C. Butler; and

After debate,

On motion by Mr. Hoar that the resolution lie on the table,

Mr. Conkling demanded the yeas and nays; which were ordered.

On motion by Mr. Thurman, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 571–581 of the Congressional Record, vol. vi.]

THURSDAY, *November* 22, 1877.

The Senate resumed the consideration of the resolution submitted by Mr. Thurman on the 20th instant, to discharge the Committee on Privileges and Elections from the further consideration of the credentials of M. C. Butler, of South Carolina; and,

The question being on the motion of Mr. Hoar that the resolution lie on the table, it was determined in the negative—yeas 30, nays 32.

The yeas and nays having been heretofore ordered,

Those who voted in the affirmative are Messrs. Allison, Booth, Bruce, Burnside, Cameron of Pennsylvania, Chaffee, Christiancy, Conkling, Dawes, Dorsey, Edmunds, Hamlin, Hoar, Howe, Ingalls, Jones of Nevada, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Oglesby, Paddock, Rollins, Sargent, Saunders, Spencer, Teller, Wadleigh, and Windom.

Those who voted in the negative are Messrs. Bailey, Barnum, Bayard, Beck, Cockrell, Coke, Conover, Davis of Illinois, Davis of West Virginia, Dennis, Eaton, Garland, Gordon, Harris, Hereford, Hill, Johnston, Jones of Florida, Lamar, McCreery, McDonald, McPherson, Merrimon, Morgan, Patterson, Randolph, Saulsbury, Thurman, Voorhees, Wallace, Whyte, and Withers.

So the motion was not agreed to.

[Several amendments to the resolution of Mr. Thurman were then offered, none of which were agreed to. The debate is found on pages 603–605 of the Congressional Record, vol. vi.]

MONDAY, *November* 26, 1877.

The Vice-President announced that the morning hour had expired, and called up the unfinished business of the Senate at its last adjournment, viz, the resolution submitted by Mr. Thurman on the 20th instant to discharge the Committee on Privileges and Elections from the further consideration of the credentials of M. C. Butler, of South Carolina; and

The Senate resumed the consideration of the said resolution; and,

After debate,

On motion by Mr. Edmunds that the Senate proceed to the consideration of executive business, it was determined in the negative—yeas 28, nays 30.

* * * * * * *

So the motion was not agreed to.

After further debate,

On motion by Mr. Edmunds to amend the resolution by striking out all after the word "resolved" and in lieu thereof inserting:

"That the Committee on Privileges and Elections be, and hereby is, instructed to inquire forthwith, and report as soon as may be, whether any threats, promises, or arrangements respecting existing or contemplated accusations or criminal prosecutions against any Senator, or any other corrupt or otherwise unlawful means or influences have been in any manner used or put in operation, directly or indirectly, by M. C. Butler, one of the claimants to a seat in the Senate from the State of South Carolina, or by any other Senator or other person, for the purpose of influencing the vote of any Senator on the question of discharging said committee from the consideration of said M. C. Butler's credentials or on the other question at the present session of the Senate; and that said committee have power to send for persons and papers, and to sit during the sittings of the Senate."

It was determined in the negative—yeas 27, nays 30.

On motion by Mr. Edmunds, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Anthony, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Conkling, Dawes, Dorsey, Edmunds, Hoar, Howe, Ingalls, Jones of Nevada, Kirkwood, McMillan, Mitchell, Morrill, Oglesby, Paddock, Rollins, Saunders, Teller, and Wadleigh.

Those who voted in the negative are Messrs. Bailey, Bayard, Beck, Cockrell, Coke,

Conover, Davis of Illinois, Davis of West Virginia, Dennis, Garland, Gordon, Harris, Hereford, Jones of Florida, Kernan, Lamar, McCreery, McDonald, McPherson, Matthews, Merrimon, Morgan, Randolph, Ransom, Saulsbury, Thurman, Voorhees, Wallace, Whyte, and Withers.

So the amendment was not agreed to.

[Several other amendments to the resolution of Mr. Thurman were then offered, none of which were agreed to.]

The question recurring on agreeing to the resolution, as follows:

"*Resolved*, That the Committee on Privileges and Elections be discharged from the consideration of the credentials of M. C. Butler, of South Carolina,"

It was determined in the affirmative—yeas 29, nays 27.

On motion by Mr. Edmunds, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bailey, Bayard, Beck, Cockrell, Coke, Conover, Davis of West Virginia, Dennis, Garland, Gordon, Harris, Hereford, Hill, Jones of Florida, Kernan, Lamar, McCreery, McDonald, McPherson, Merrimon, Morgan, Patterson, Randolph, Saulsbury, Thurman, Voorhees, Wallace, Whyte, and Withers.

Those who voted in the negative are Messrs. Allison, Anthony, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Conkling, Dawes, Dorsey, Edmunds, Hoar, Howe, Jones of Nevada, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Oglesby, Paddock, Rollins, Saunders, Spencer, Teller, and Wadleigh.

So the resolution was agreed to.

* * * * * * *

Mr. Thurman submitted a motion that M. C. Butler, of South Carolina, be sworn as Senator from that State.

Mr. Edmunds objected to the consideration of the motion this day.

[The debate is found on pages 638–714 of the Congressional Record, vol. vi.]

WEDNESDAY, *November* 28, 1877.

The Senate proceeded to the consideration of the resolution to admit William Pitt Kellogg to a seat in the Senate.

On motion by Mr. Thurman to amend the resolution by striking out all after the word "resolved" and in lieu thereof inserting:

"That M. C. Butler be now sworn as a Senator from the State of South Carolina,"

After debate,

On the question to agree thereto, the yeas were 30 and the nays were 30.

On motion by Mr. Edmunds, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bailey, Bayard, Beck, Cockrell, Coke, Davis of Illinois, Davis of West Virginia, Dennis, Eaton, Garland, Gordon, Harris, Hereford, Hill, Jones of Florida, Kernan, Lamar, McCreery, McDonald, McPherson, Merrimon, Morgan, Patterson, Randolph, Saulsbury, Thurman, Voorhees, Wallace, Whyte, and Withers.

Those who voted in the negative are Messrs. Allison, Anthony, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Conkling, Conover, Dawes, Dorsey, Edmunds, Hoar, Howe, Jones of Nevada, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Oglesby, Paddock, Rollins, Sargent, Saunders, Spencer, Teller, and Wadleigh.

The vote of the Senate being equally divided,

The Vice-President voted in the negative.

So the amendment was not agreed to.

Upon the announcement of the result of the vote on the amendment,

Mr. Thurman rose to a question of order, and submitted that the provision of the Constitution that the Vice-President shall have no vote unless where the Senate is equally divided does not apply to the case of seating a member; but that questions of seating a member should be left to the Senators themselves, under the provision that each House shall be the judge of the elections, qualifications, and returns of its own members; and,

After debate,

Mr. Thurman withdrew the question of order.

[The debate is found on pages 730–740 of the Congressional Record, vol. vi.]

FRIDAY, *November* 30, 1877.

On motion by Mr. Thurman that M. C. Butler be now sworn as a Senator from the State of South Carolina, it was determined in the affirmative—yeas 29, nays 28.

On motion by Mr. Edmunds, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Bailey, Bayard, Beck, Cockrell, Coke,

Conover, Davis of West Virginia, Dennis, Eaton, Garland, Gordon, Harris, Hereford, Hill, Jones of Florida, Kernan, Lamar, McCreery, McDonald, McPherson, Merrimon, Morgan, Patterson, Randolph, Saulsbury, Thurman, Voorhees, Wallace, and Withers.

Those who voted in the negative are Messrs. Allison, Anthony, Booth, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Conkling, Dawes, Dorsey, Edmunds, Hoar, Howe, Jones of Nevada, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Oglesby, Paddock, Rollins, Saunders, Spencer, Teller, and Wadleigh.

So the motion was agreed to.

Mr. M. C. Butler then appeared, and the oath prescribed by law having been administered to him by the Vice-President, he took his seat in the Senate.

[Second session of the Forty-fifth Congress.]

THURSDAY, *December* 13, 1877.

Mr. Cameron, of Wisconsin, presented the petition of David T. Corbin, praying that his right to a seat in the Senate as Senator from South Carolina may be inquired into and determined by the Senate upon its merits.

SATURDAY, *December* 15, 1877.

Mr. Butler submitted the following resolution for consideration:

"*Resolved*, That the Committee on Privileges and Elections be, and hereby is, instructed to inquire forthwith, and report as soon as may be, whether any threats, promises, or arrangements respecting existing or contemplated accusations or criminal prosecutions against any Senator, or any other corrupt or otherwise unlawful means or influences have been in any manner used or put in operation, directly or indirectly, by M. C. Butler, one of the Senators from the State of South Carolina, or by any other Senator or other person, for the purpose of influencing the vote of Senators on the question of discharging said committee from the consideration of said M. C. Butler's credentials or the other question at the late session of the Senate; and that said committee have power to send for persons and papers, and to sit during the sittings of the Senate."

[The debate is found on pages 235, 236 of the Congressional Record, vol. vii, part 1.]

TUESDAY, *March* 26, 1878.

On motion by Mr. Cameron, of Wisconsin,

Ordered, That the petition of David T. Corbin, praying that his right to a seat in the Senate may be inquired into and determined, be referred to the Committee on Privileges and Elections.

TUESDAY, *June* 4, 1878.

Mr. Wadleigh submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That one hundred copies of the arguments before the Committee on Privileges and Elections in the case of Messrs. Corbin and Butler be printed for the use of the committee."

[Third session of the Forty-fifth Congress.]

THURSDAY, *December* 5, 1878.

Mr. Cameron, of Wisconsin, submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That one hundred copies of the report made to the Committee on Privileges and Elections by Mr. Cameron, of Wisconsin, in the matter of the claim of David T. Corbin to a seat in this body as Senator from the State of South Carolina be printed for the use of said committee."

THURSDAY, *January* 23, 1879.

Mr. Wadleigh submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That one hundred copies of the minority report of the subcommittee on Privileges and Elections in the case of Messrs. Butler and Corbin be printed for the use of the committee."

TUESDAY, *February* 4, 1879.

Mr. Cameron, of Wisconsin, from the Committee on Privileges and Elections, to whom were referred the credentials of David T. Corbin, claiming to be Senator-elect from the

State of South Carolina, and his petition praying an inquiry into his right to a seat in the Senate, submitted a report (No. 707) accompanied by the following resolution:

"*Resolved*, That David T. Corbin was on the 12th day of December, A. D. 1876, duly elected by the legislature of the State of South Carolina a Senator from that State in the Congress of the United States for the term of six years commencing on the 4th of March, A. D. 1877, and that as such he is entitled to have the oath of office administered to him."

Mr. Hill asked and obtained leave to submit the views of the minority of the Committee on Privileges and Elections on the foregoing case; which were ordered to be printed, to accompany the report (No. 707).

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Wadleigh (chairman), Mitchell, Cameron of Wisconsin, McMillan, Hoar, Ingalls, Saulsbury, Merrimon, and Hill.]

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1879.—Ordered to be printed.

Mr. Cameron, of Wisconsin, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom was referred the credentials of David T. Corbin and M. C. Butler, each claiming to be Senator-elect from the State of South Carolina, submit the following report:

The resolution of the Senate of March 7, 1877, referring this case, is as follows:

"*Resolved*, That the credentials of David T. Corbin and M. C. Butler, each claiming to be a Senator from the State of South Carolina, lie on the table until the committees are appointed, and their credentials shall then be referred to the Committee on Privileges and Elections."

On the 9th day of March the committees were appointed, and, without any further action on the part of the Senate, this committee received the credentials of David T. Corbin and M. C. Butler. The committee took no action upon these credentials during the special session convened in March, 1877. At the called session, convened on the 15th October, 1877, the Senate passed an order by which the subjects referred to the committees and not acted upon at the close of the March session were returned to the several committees to which they had been referred. Under this order these credentials were returned to this committee.

On the 20th of November, 1877, Mr. Thurman offered a resolution that "the Committee on Privileges and Elections be discharged from the further consideration of the credentials of M. C. Butler." This resolution is to be found in the Congressional Record of November 21, page 12. The final vote upon that question was taken November 30, 1877, and the credentials of Mr. Butler were withdrawn from the committee.

On the 22d of November, 1877, Mr. Edmunds offered an amendment to the resolution of Mr. Thurman for the purpose of attaching the name of D. T. Corbin to the resolution. It appears upon page 27 of the Congressional Record of November 23:

"Mr. EDMUNDS. Mr. President, I am now going to make a motion to amend, that I cannot help thinking will get the votes of the gentlemen who voted against the former proposition. I am sorry I had not thought of it before, because in that case I should have got all their votes in the first instance. After the word 'credentials,' as it stands in the resolution, I move to insert the words 'of William Pitt Kellogg and Henry M. Spofford, of Louisiana, and,' so that the resolution will read, if amended as I now propose, 'that the Committee on Privileges and Elections be discharged from the consideration of the credentials of William Pitt Kellogg and Henry M. Spofford, of Louisiana, and of M. C. Butler, of South Carolina'; and I move to add also, after 'Butler,' the words 'and D. T. Corbin,' so as to put them all on that equality where the fourteenth amendment, that we all believe in now, places them."

That motion, as appears on the same page of the Record, was not agreed to.

On the 30th of November, 1877, the Senate having under consideration the contested-election case of William Pitt Kellogg and Henry M. Spofford, the following occurred:

"Mr. EDMUNDS. Mr. President, I ask the liberty to venture to suggest once more the possibility of our coming to an understanding as to taking a vote upon these questions, and I ask that unanimous consent be given in the usual method, not that the Journal shall bind as an order, but the understanding of Senators does; I ask unanimous consent to come to this understanding among Senators:

"'First, to vote on the Kellogg-Spofford case at or before 2 o'clock and 30 minutes p. m. to-day'—

"By which I mean the next 2 o'clock and 30 minutes, one hour from this time by the clock—

"'The chairman of the committee or any one allowed by him to have the last hour to sum up if desired.'

"Mr. THURMAN. That would give him all the time now.

"Mr. EDMUNDS. Exactly; but your side has had all the evening on the Kellogg case.

"Mr. THURMAN. Go ahead.

"Mr. EDMUNDS. 'Second, to vote on the Butler-Corbin case at or before the expiration of one hour after the Kellogg-Spofford case is disposed of, the time to be equally divided, the chairman of the committee or some one for him to have the last thirty minutes to close the debate.'

"I ask unanimous consent to come to that understanding, Mr. President.

"The VICE-PRESIDENT. Is there objection?

"Mr. GARLAND. Is there nothing, I ask the Senator from Vermont, of the other case?

"Mr. EDMUNDS. I propose nothing. I ask unanimous consent for that I have named, nothing more, nothing less.

"Mr. GARLAND. I do not think it is an improper proposition at all.

"Mr. THURMAN. Mr. President, I hope the proposition will be agreed to, and I ask my Democratic friends on this floor to agree to it and to trust to me that it will result in an arrangement perfectly honorable and fair to both parties.

"The VICE-PRESIDENT. Is there objection to the proposition? The Chair hears none.

"Several SENATORS. Question! Question!"—(Congressional Record, vol. vi, 1877, pages 796, 797.)

The resolution seating Mr. Kellogg was then adopted.

Thereupon Mr. Thurman moved that M. C. Butler be sworn in as Senator from South Carolina, and the resolution was voted upon and adopted without debate.

On the 13th of December, 1877, Mr. Corbin's petition was presented to the Senate, asking that his claim to a seat in the Senate be considered upon its merits.

The petition is as follows:

To the honorable Senate of the United States:

Your petitioner, David T. Corbin, of the State of South Carolina, shows to your honorable body that he was, on the 12th day of December, A. D. 1876, duly and lawfully elected by the legislature of the State of South Carolina to the office of United States Senator from that State for the term of six years commencing the 4th day of March, A. D. 1877.

That in said election all the provisions of the Constitution and laws of the United States were complied with, and your petitioner was regularly and duly declared elected by the legislature of said State, and duly commissioned accordingly by the governor of said State.

And your petitioner further shows that his credentials were presented to your honorable body before the close of the last regular session; and at the commencement of the extra session in March last said credentials, together with the credentials of M. C. Butler (who claimed to have been elected also Senator from South Carolina), were referred to the Committee on Privileges and Elections of your honorable body.

And your petitioner shows, on information and belief, that his said credentials have, since said reference of them to said committee, remained in the possession of said committee, and that no action has been taken thereon, either by said committee or the Senate.

And your petitioner now prays that your honorable body will, in justice to your petitioner, and in justice to the legislature of the State of South Carolina that elected and the governor that commissioned him, inquire into, hear, and determine on their merits the claim and right of your petitioner to a seat in your honorable body as Senator from the State of South Carolina.

All of which is respectfully submitted.

DAVID T. CORBIN.

On the 26th day of March, 1878, this petition was referred to this committee. At the very outset of the committee's examination of Mr. Corbin's claim they were met with a plea to their jurisdiction, submitted by the counsel of Mr. M. C. Butler, as follows:

"The sitting member respectfully submits that the Committee on Privileges and Elections cannot entertain jurisdiction of the contestant's claim to the seat of a Senator from the State of South Carolina in the Congress of the United States. He bases his denial of the right of the committee to take jurisdiction of the case upon the following grounds:

"1. In the adjudication of a contested-election case, under that clause of the Constitution which makes each House "the judge of the elections, returns, and qualifications of its own members," the Senate acts as a judicial tribunal. And the general principle that every question in issue settled by the final judgment of a judicial tribunal becomes *res judicata* as between the parties thereto applies to judgments of the Senate in contested-election cases.

"2. The contestant's petition, referred to the committee March 26, 1878, suggests no question which was not adjudicated by the Senate in the determination of this cause at the first session of the Forty-fifth Congress; nor was any question involved in the contestant's case as presented to the committee or to the Senate at that session which was not adjudicated in that determination.

"3. Inasmuch as the Senate has no set forms for its judicial decisions, the nature and scope of an adjudication will be determined, not by the mere form of the judgment, but by the whole record of the case.

"4. When the Senate adjudicates a contested-election case upon its merits the jurisdition of the committee over the case *ipso facto* terminates, whatever formalities may or may not attend the termination of such jurisdiction.

"5. Judicial tribunals of last resort will not rehear a cause after final judgment, on the application of a party, but only on a motion to reconsider made by a member of the tribunal who concurred in the decision; nor even in such a case after the expiration of the term at which the judgment is rendered. And this principle applies to decisions made by the Senate in contested-election cases."

An elaborate discussion of the proposition stated in this plea to the jurisdiction is not necessary, as while expressing no opinion on their general soundness, the committee overruled the plea on the ground that the same is not supported by the facts in the case. The claim or right of Mr. Corbin to a seat in the Senate as Senator from the State of South Carolina is not *res adjudicata*, because in point of fact it has not been passed upon and adjudicated by the Senate.

To ascertain what has and what has not been determined in any given case, reference must be had to the record of the proceedings taken therein.

If the record shows the controversy between the parties determined upon a consideration of the merits, then that determination binds the parties and their privies, and precludes further inquiry.

The facts above stated, from the records of the Senate in regard to Mr. Corbin's case, show that his credentials were referred to this committee of the Senate, and that no action of the Senate has been had to withdraw them from the committee. And the fact is that the credentials have been with the committee to the present time by the direct action of the Senate. No case has in any form been made up between Mr. Corbin and Mr. Butler and submitted to the Senate to be passed upon, and no case, as between them, has been passed upon by the Senate.

Mr. Thurman's resolution, that the Committee on Privileges and Elections be discharged from the further consideration of the credentials of M. C. Butler, of South Carolina, meant precisely what it said. Its language is too clear to be misunderstood. It indicates a mere purpose on the part of the mover to dispense with the further service of the Committee on Privileges and Elections in the consideration of Mr. Butler's credentials.

If there was any question as to his purpose, Mr. Thurman's remarks on introducing it would relieve it of any doubt. He said, among other things, on introducing it—

* * * * * * *

"I do not ask them in this resolution to decide that Mr. Butler is chosen Senator from South Carolina. I ask that the committee be discharged from the consideration of his credentials. Any one who believes Mr. Corbin to have been elected can make a like motion in his case, and thus the whole case will be before the Senate; and all I ask is that the Senate will hear and decide."

In the discussion that followed on this resolution the Record shows it was, without exception, the purpose of Senators to show why this resolution on the one hand should be adopted, and on the other why it should not be adopted. Much was incidentally said by individual Senators as to the validity of the claims of Mr. Butler and Mr. Corbin respectively, but this was, as plainly appears, with a view to influence action upon the pending resolution. But whatever individual Senators said in the course of the discussion, the action of the Senate is to be looked to finally to acertain what was determined. When the resolution was adopted its effect was simply to bring before the Senate the credentials of M. C. Butler. It did not bring before the Senate the credentials of D. T. Corbin.

After Mr. Butler's credentials were thus brought before the Senate, a motion was made that he be sworn in as Senator from South Carolina, and without debate the vote was taken and the motion adopted. Mr. Butler was then sworn in. Swearing in a Senator on his credentials has always been regarded as admitting him to his seat on the *prima facie* case made by those credentials. There is no instance in the history of the Senate where a member has been so sworn in and allowed to take his seat as Senator that such admission has been held to preclude investigation into the merits of his title. On the other hand the precedents are exactly the reverse. The cases of James Shields of Illinois, James Harlan of Iowa, Bright and Fitch of Indiana, and of Mallory of Florida, reported

s Contested Election Cases in Congress, at pages 606, 621, 629, and 608, are
f this rule.
principle of *res adjudicata* can only apply where parties to the controversy have
the court or body having jurisdiction thereof, and have been heard upon the
eir respective claims, and a decision has been rendered thereon.
esent case Mr. Corbin has never been a party before the Senate to any contro-
Mr. Butler respecting his rights to a seat as Senator. The Senate, by its action,
mitted him to be a party to any such controversy, and the merits of his case
been passed upon by the Senate. Therefore, the doctrine of *res adjudicata* has
ion to the case.
g, the committee have proceeded to inquire into the grounds of Mr. Corbin's
eat in the United States Senate as Senator from the State of South Carolina.
nds upon which his claim rests are as follows:
l election was held in that State November 7, 1876, for State and county
l for members of the house of representatives of the State legislature, and for
e members of the State senate.
ns of this election were made, first, by the several boards of precinct man-
board consisting of three members—to the commissioners of election for their
ounties, called in this connection boards of "county canvassers"; second, by
boards of county canvassers to the board of State canvassers at Columbia, the
he State; and, third, by the board of State canvassers who finally acted upon
and determined and declared the results.
d of State canvassers on November 22, 1876, completed their canvass of this
l returned as duly elected sixteen (16) State senators and one hundred and
3) members of the house of representatives.
ntly, and previous to November 28, 1876, the day of the meeting of the
the secretary of state delivered the official certificate of his election to each
ared elected by the board of State canvassers.
8th day of November, 1876, the newly elected senators, with those holding
he former election, met and organized as the senate, in the senate chamber in
ouse. The legality of the senate as a legislative body and the regularity of
tion are not now and never have been questioned.
me day fifty-nine (59) of the persons declared elected by the board of State
met in the hall of the house of representatives in the State-house and organ-
house of representatives, the other fifty-seven members, holding certificates
from the board of State canvassers, refusing to meet with them. These fifty-
bers met in a private hall in the city of Columbia, and pretended to organize
of representatives by the election of William H. Wallace as speaker. The
members at the State-house elected E. W. M. Mackey speaker.
bodies organized at the State-house recognized each other, respectively, as the
house of representatives of the State by the interchange of official communi-
taining to legislative business. They also officially recognized Governor
n as the governor of the State, and were officially recognized by him as the
house of representatives, together constituting the legislature of the State.
nber 29, 1876, five persons who contested the election of the persons declared
the board of State canvassers as representatives of Barnwell County were
this house of representatives at the State-house to be entitled to seats, and
ted and sworn in as members.
nber 2, 1876, five persons who in like manner contested the election of the
lared elected by the board of State canvassers as representatives of Abbeville
e declared by this house to be entitled to seats, and were admitted and sworn
ers.
nber 5, 1876, four other persons, contestants for seats from Aiken County,
e manner admitted and sworn in as members.
bers thus admitted, with the original membership of fifty-nine, make the
ber of members of this house of representatives (commonly known as the
se) seventy-three.
nber 2, 1876, this house of representatives considered the matter of the elec-
embers of the house of representatives in Edgefield and Laurens Counties,
d that no valid election was held in those counties on the 7th of November,

8th day of December, 1876, being the second Tuesday after the said 28th day
r, 1876, the two bodies above described proceeded, in the manner prescribed
tes of the United States (U. S. Rev. Stat., Tit. II, ch. 1, p. 3), to elect a Senator
.

bin received a majority of all the votes cast in both bodies on December 12,

On the following day, December 13, 1876, the two bodies convened in joint assembly at 12 o'clock meridian; the journal of each house was read; and it appearing that D. T. Corbin had received a majority of all the votes in each house, he was declared duly elected Senator.

Mr. Corbin's credentials were signed on December 13, 1876, by Governor Chamberlain, who was, until December 14, 1876, the unquestioned governor of the State, General Hampton not claiming to hold the office until after his inauguration on December 14, 1876.

Upon this general statement of facts arises the question, was the election of Mr. Corbin valid, and is he now entitled to a seat in this body as a Senator from the State of South Carolina?

I. It has already been stated that no question has ever been made as to the completeness validity, as a legislative body and a constituent house of the general assembly, of the senate which sat in the State-house and co-operated with the house of representatives, in which Mr. Corbin received a majority of votes. No other body claimed to be the senate.

This senate never in any manner recognized the existence, as a legislative body, of the other assemblage which assumed to be the house of representatives (commonly known as the Wallace house), and which met in a private hall in Columbia.

The action of this senate, therefore, so far as it enters into the title of Mr. Corbin, need not be further discussed. It was valid.

The part performed by the house of representatives which sat in the State-house in the election of Mr. Corbin presents the most important question which arises in this case.

The validity of this body is called in question. It is claimed, in denial of Mr. Corbin's title, that this body was never a valid legislative body under the constitution and laws of South Carolina; that it never had a quorum of lawfully elected members; that all its acts were null and void.

The facts upon which this question must be decided are these:

The constitution of the State, Article II, section 4, provides as follows:

"The house of representatives shall consist of one hundred and twenty-four members, to be apportioned among the several counties according to the number of inhabitants in each."

Article II, section 14, is as follows:

"Each house shall judge of the election returns and qualifications of its own members; and a majority of each house shall constitute a quorum to do business."

At the election of November 7, 1876, one hundred and twenty-four persons were to be voted for as members of the house of representatives. Of this number, constituting a full house, the board of State canvassers declared that only one hundred and sixteen were duly elected, and the secretary of state issued certificates of election to only one hundred and sixteen, the canvassers at the same time placing upon the records a declaration of their inability, by reason of unlawful influences and practices in the election, to determine that any persons had been duly elected as representatives for the counties of Edgefield and Laurens.

Of the one hundred and sixteen persons thus declared elected by the board of State canvassers, and holding certificates of election from the secretary of state, fifty-nine took part in the organization of the house of representatives in the State-house on November 28, 1876, being a majority of all the members declared elected by the board of State canvassers and holding certificates of election from the secretary of state.

Was the body thus composed and organized the legal house of representatives of the State?

Attention has been called to the fact that after the organization of the house of representatives which elected Mr. Corbin certain of those who took part in that organization withdrew and acted with another assemblage calling itself the house of representatives, thereby reducing the number of canvassing board members sitting in the Mackey house from fifty-nine to fifty-three, of whom only forty-four voted for Mr. Corbin.

There is no force in these suggestions, because the fact is that the number of members who acted with the Mackey house was never reduced below fifty-nine. It is true that a few of those who formed part of the original fifty-nine canvassing board members of the Mackey house left their seats in the State-house and joined the Wallace house; but before a single such person had left the Mackey house had, upon contests duly made, admitted other members in number more than equal to those who afterward left.

If, therefore, the original house of fifty-nine members was a lawful house on the day of its organization, it was a lawful house at all times thereafter till its final adjournment December 22, 1876. If it was a lawful house for any purpose it was a lawful house for the purpose of deciding contested elections of its own members and for admitting those whom it might adjudge to be lawfully elected.

ement that out of the original fifty-nine who organized the Mackey house
our voted for Mr. Corbin has no significance. At the time of his election the
s not how many canvassing board members voted for Mr. Corbin, but how
al members voted for him. If the house was lawfully organized on Novem-
the members admitted on the 29th, and subsequently, were lawful members,
all the rights and powers belonging to any members.
e point of the legality of the Mackey house.
titutional provisions which regulate the matter of a legislative quorum in
lina are (1) that "the house shall consist of one hundred and twenty-four
and (2) that "a majority of each house shall constitute a quorum to do

its most condensed form, the inquiry here is, what is the meaning of the
majority of each house"? Does it mean a majority of one hundred and
or a majority of the members duly elected or qualified?
iginal question it would seem that there are strong reasons why the latter
d be adopted.
rmer view be adopted a contingency may easily occur in which it will be
impossible to organize a lawful house. If under any circumstances there
failure to elect a majority of the whole possible representation, the govern-
d be brought at once to a dead stop; nor would there be any power anywhere
the obstruction.
ition to this view it is said that if it be held that a number less than a major-
whole possible representation constitute a quorum, then under some circum-
will be in the power of a small fraction of the whole representation to hold
se the powers of the house. This is admitted; but such a danger will not
e life itself of the State. The government will be able to go on without
extra legal remedies.
rnments aim at self-perpetuation. No element of self-destruction is inten-
mitted into the framework or fundamental law of a State. All constitutional
should therefore receive a construction, if possible, which shall be in harmony
dea of the perpetuity of the government, of its unbroken life and efficiency.
were adopted that a quorum of the house of representatives of South Caro-
consist of at least sixty-three members, then if from any cause sixty-three
hould not be elected, it would be impossible by any constitutional methods
house of representatives at least until the next general election.
er could be chosen; no writs of election could be issued. Did the fifty-nine
omposing the body at the State-house constitute a quorum of the house of
ives?
t controlling decisions upon this question are those of the two Houses of Con-

stitution of the United States and the constitution of South Carolina may be
tain identical provisions upon this point. The Constitution of the United
ides as follows:
nate of the United States shall be composed of two Senators from each State,
the legislature thereof for six years.—(Article I, section 3.)
mber of Representatives shall not exceed one for every thirty thousand, but
shall have at least one Representative."—(Article I, section 2.)
respect in which these provisions differ from the corresponding provisions of
ution of South Carolina is that here the numerical aggregate of Senators and
tives is not stated. The rule of representation is laid down, and under that
is always at any specified point of time a fixed number of Senators and Rep-
s in Congress, precisely as much so as in South Carolina.
ple these two constitutional provisions are identical, and it is idle to insist
ere verbal difference is of the least importance.
isions respecting a quorum in the Constitution of the United States and that
arolina are identical in terms, namely:
rity of each house shall constitute a quorum to do business."
e found that in the Senate of the United States prior to 1862 it was held as a
arliamentary practice in some instances that a quorum consisted of a majority
le possible representation, and in other instances of a majority of Senators
l qualified.
tion does not appear to have been discussed by the Senate, or to have been
considered, until after April 11, 1862. On that day Mr. Sherman, of Ohio,
esolution, which was referred to the Committee on the Judiciary, in these

d, That a majority of the Senators duly elected and entitled to seats in this
onstitutional quorum."—(Congressional Globe, April 11, 1862.)

On July 9, 1862, this resolution was debated in the Senate and laid upon the
a vote of 19 to 18.

On March 7, 1864, Mr. Sherman offered a resolution, which was referred to t
mittee on the Judiciary, in these words:

"*Resolved*, That a quorum of the Senate consists of a majority of the Sena
chosen or qualified."

On May 3, 1864, the Committee on the Judiciary having been discharged
further consideration of the resolution, it was taken up and debated. On thi
following day the subject was elaborately discussed, especially by Senators Ca
Davis against the resolution, and by Senators Johnson and Sherman in its fav
words "or qualified" having been struck out, the resolution was adopted by
26 to 11, May 4, 1864, in these words:

"*Resolved*, That a quorum of the Senate consists of a majority of the Sena
chosen."—(Congressional Globe, March 7, May 3 and 4, 1864.)

The precedents in the House of Representatives prior to 1861 had been var
here, as in the Senate, the subject does not appear to have been maturely conside
1861. During the first session of the Thirty-seventh Congress, in the House
sentatives, Speaker Grow finally decided that a quorum of the House consisted
jority of the members chosen, and he was sustained by the House in this d
(Journal H. R., 1st sess. 37th Congress.)

The effort has sometimes been made to disparage this precedent by stating t
made under the stress of a necessity to secure an organization of the House.
mistake. The decision was made fifteen days after the organization of the H
upon a question which did not involve the question of the validity of the orga

The resolution adopted by the Senate in 1864 has since been adopted by the
a permanent rule, and now appears in Rule 1.

If, in opposition to these precedents, it is urged that they were made becau
cial circumstances then existing, or upon certain constitutional theories rega
status of the States then in rebellion, the answer is that there is no doubt tha
of an opposite construction did lead to the final reversal of former precedents. A
so. One of the truest canons of constitutional construction is that which adop
struction which best effectuates the purpose of the instrument or provision
strued. A construction which leads directly to the practical paralysis of the l
power of a State can never be admitted.

Professor Farrar, in his Manual of the Constitution of the United States, page
in relation to the constitutional provision respecting a quorum that "this has
to be a majority of the members actually sworn in and entitled to seats at the
not a majority of a full delegation from all the States."

Another precedent arose in the Senate of the United States on March 2, 186
proposition to amend the Constitution was on its passage. The Constitution,
point, provides that "Congress, whenever two-thirds of both Houses shall deem
sary, shall propose amendments to this Constitution," &c.

When the vote was taken in the Senate, March 2, 1861, Mr. Trumbull raised
of order that this provision required two-thirds of all the Senators which all t
were entitled to elect. The Presiding Officer overruled the point of order, and
peal the ruling was sustained by a vote of 33 to 1.

Another precedent of considerable force is found in connection with the ratif
the fifteenth amendment to the Constitution. The constitution of Indiana prov
two-thirds of each house should constitute a quorum. In 1867 certain memb
legislature resigned in order to defeat a vote upon the ratification of the am
The remaining members thereupon decided that two-thirds of the actual me
constituted a quorum, and proceeded to ratify the amendment. This action
fied in forwarding the vote of the legislature on the ratification of the amendm
question was raised by Congress in regard to the legality of the vote, and t
Indiana, as thus cast, was accepted and counted.

The case of State *vs.* Huggins, 1 McCord, 139, decided in the court of appeals
Carolina, is in point. Eighteen managers of election were appointed by the l
for the district of Georgetown. Two had refused to qualify, one was dead, an
disqualified, reducing the number to fourteen. It was held by the court that a
of fourteen properly formed the board of managers for the district to determin
lidity of the election of a sheriff, a majority of those qualified to serve, and not
ity of the whole number appointed, being a lawful quorum.

Under the provision of the Constitution of the United States that "each Ho
be judge of the elections, returns, and qualifications of its own members," the
the sole judge of this matter. The action, opinion, or decision of any other
therefore, entitled to such weight or respect only as may be due to the reaso
support it.

It is proper to consider the connection of the supreme court of the State of South Carolina with this case. And it may be remarked that this presents the most remarkable and, perhaps, unfortunate feature of the controversy. That court may be said, without injustice, to have taken part in the purely political contests of the State. Instead of leaving such contests to be settled by other departments of the government, where they properly belong, the court engaged in those contests.

The action of that court was taken under these circumstances: After the Mackey house and the Wallace house were each organized, the former with fifty-nine and the latter with fifty-seven members declared elected by the canvassing board, a petition was presented to the supreme court by Mr. Wallace, as speaker of the Wallace house, asking a mandamus to compel the secretary of state and the speaker of the Mackey house to deliver to him the returns of the election for governor and lieutenant-governor.

By Article III, section 4, of the constitution of the State, these returns are required to be sent by the managers of the election to the secretary of state, who is required to return them to the speaker of the house of representatives.

By the return of the secretary of state to the rule to show cause, issued by the supreme court upon the petition above stated, it appeared that that officer had delivered the returns to the speaker of the Mackey house.

The return of the speaker of the Mackey house showed that he had received the returns from the secretary of state, and held them by virtue of his office as speaker, and he denied the power and jurisdiction of the court in the matter.

The court thereupon reserved the question as to the secretary of state for further argument, and dismissed the petition as to Speaker Mackey.

In coming to this conclusion, the court said that "sixty-three members were in their seats when Mr. Wallace was elected. * * * That the house of representatives consisted of one hundred and twenty-four members, and sixty-three were necessary for a quorum to do business. * * * That all the members had certificates from the secretary of state except eight, and the qualification of these eight was established by the proceedings in this court. * * * That no matter what was the character of the certificates they had, the return of the board of State canvassers to the court, showing that they had received the greatest number of votes in their particular counties, entitled them to access to the floor for the purpose of organization."

In taking cognizance of this matter and rendering a decision therein the court plainly transgressed the limits of its judicial powers, and its decision is void and binding on no one.

The constitution of the State, in section 26 of Article I, provides that "in the government of this Commonwealth the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other."

That the due organization of the house of representatives is a legislative power or function, and not a judicial one, seems too clear for argument. Two bodies were claiming each to be the lawful house of representatives. This was a purely political question. It was a question between two sections or parts of one legislative body, each claiming to represent that body. No other questions were involved.

Whether Mackey or Wallace was entitled to have the election returns was a question which directly involved the action of the members of the legislative body, not in its effects upon citizens generally, but in relation to the due organization of that body under powers granted to it alone by the constitution.

The interposition of the court was not only without authority, but was also absolutely unnecessary. There was ample power in the lawful house of representatives to afford the necessary remedy in the matter if any remedy was needed.

The judgment of the court itself shows for another reason its want of jurisdiction over the case. It held that Mackey, not being an official person, could not be reached by mandamus and dismissed the petition. It could grant no relief, accomplish no result, and yet it proceeded to express an opinion. This was extrajudicial. The court must have recognized this dilemma at the outset, namely, if Mackey is speaker he is the lawful custodian of the returns; if he is not speaker he is not such an official person as can be reached by mandamus. Hence, in either event, no writ could have been issued, and nothing remained but to dismiss the petition.

Under these circumstances, the expression of an opinion that Wallace was the speaker and that sixty-three members are necessary to form a quorum was utterly uncalled for, a mere empty *obiter dictum*.

When, therefore, it is claimed that the supreme court of the State is empowered to construe the constitution, and hence to decide upon the question of a quorum, the answer is that this is true only when the court has a proper case before it requiring the decision of such a question.

But further, it is to be noted that the court in giving this opinion assumed the fact, now denied, that one hundred and twenty-four members of the house, instead of one hundred and sixteen, had been in fact chosen.

The supreme court gave no reason for the opinion that sixty-three members wer sary to form a quorum. It was their unsupported opinion, a *dictum* in every se expressed in the course of reasoning or discussion leading to a judgment, and unsupported by argument.

In Carroll *vs.* Lessee of Carroll, 16 How., 28, Judge Curtis said: "This court, ar courts organized under the common law, has never held itself bound by any pa opinion which was not needful to the ascertainment of the right or title in ques tween the parties. In Cohens *vs.* Virginia, 6 Wheat., 399, this court was much with some portion of its opinion in the case of Marbury *vs.* Madison. And Mı Justice Marshall said: 'It is a maxim not to be disregarded that general expres every opinion are to be taken in connection with the case in which those express used. If they go beyond the case they may be respected, but ought not to con judgment in a subsequent suit, when the very point is presented. The reason maxim is obvious. The question actually before the court is investigated with c considered in its full extent; other principles which may serve to illustrate it sidered in their relation to the case decided, but their possible bearing on all otl is seldom completely investigated.' The cases of *ex parte* Christy, 3 How., 292, ı ness *vs.* Peck, 7 How., 612, are an illustration of the rule that any opinion giver elsewhere cannot be relied on as a binding authority unless the case called for its sion. Its weight of reason must depend on what it contains."

The conclusion on this point is that the construction of that provision of the tution of the United States relative to a quorum given by both Houses of Co applicable to a like provision in the constitution of the State of South Carolina.

It is a construction dictated by sound reason and public policy. And if it is a sound construction of the Constitution of the United States it is equally a safe an construction of the constitution of the State of South Carolina.

A quorum, therefore, of either house of the legislature of South Carolina must to be a majority of the members chosen.

Legality of the action of the board of State canvassers.

There is another question lying back of those already discussed which must attention, viz: Was the action of the board of State canvassers in refusing to ce election of members of the house for Edgefield and Laurens Counties legal?

The fact has already been stated that the board of State canvassers did not d and declare any persons elected to the house of representatives for Edgefield and Counties. It may also be mentioned here that, in consequence of this action of tl of State canvassers, no person representing Edgefield or Laurens Counties took pa organization of the Mackey house.

The provisions of the statutes of South Carolina defining the powers and duti canvassing boards which are important to the present question are as follows:

"SEC. 16. The board of county canvassers shall then proceed to count the vot county, and shall make such statements thereof as the nature of the election quire within ten days of the time of the first meeting as a board of county ca and shall transmit to the board of State canvassers any protest and all papers re the election.

"SEC. 24. The board of State canvassers shall, upon certified copies of the st made by the board of county canvassers, proceed to make a statement of the wh ber of votes given at such election for the various officers, and for each of them v distinguishing the several counties in which they were given. They shall cer statements to be correct, and subscribe the same with their proper names.

"SEC. 25. They shall make and subscribe, on the proper statement, a certificat determination, and shall deliver the same to the secretary of state.

"SEC. 26. Upon such statements they shall then proceed to determine and what persons have been by the greatest number of votes duly elected to such either of them. They shall have power, and it is made their duty, to decide under protest or contest that may arise, when the power to do so does not, by stitution, reside in some other body.

"SEC. 27. The board shall have power to adjourn from day to day for a tern ceeding ten days."

A large mass of evidence in the form of affidavits was laid before the board canvassers, tending to show irregularities and illegal influences affecting the el the counties of Edgefield and Laurens, to such an extent as to render it impos the board to determine and declare who had been duly elected. A summary of dence appears in the "statement" of Mr. Corbin's case, and need not be repeat

Under the provisions of the statutes which have now been presented, and evidences affecting the election in Edgefield and Laurens Counties referred to, tl of State canvassers determined that they could make no statement or determin the election in those counties.

The board of State canvassers was authorized to reach such a conclusion if, in their judgment, the facts presented to them warranted it. They were required "to proceed to determine and declare what persons have been by the greatest number of votes duly elected to such offices, or either of them. In the present instance they found themselves unable to determine and declare that any persons had been by the greatest number of votes duly elected as representatives for Edgefield and Laurens Counties, and they so declared. If, for purposes of argument, it were here admitted that it was the duty of the board to declare what persons appeared to be elected upon the face of the returns, still until they did so declare, or until the house of representatives itself had acted upon the question, the persons claiming to be elected as representatives for these counties could have no claim to take part in the organization or proceedings of the house of representatives.

It has been claimed in argument that the action of the board of State canvassers was illegal because they undertook to decide a case under protest or contest, when the power to do so resided, by the constitution, in the house of representatives itself. The answer to this is that they did not undertake to decide any cases under protest or contest, or to decide at all upon the final right of any person to sit as representative for Edgefield or Laurens Counties. Their action may more properly be described as a reference of the matter to that body which, by law, had a right to pass finally upon the question of the election, qualifications, and returns of its own members.

It is true that in many, and perhaps most of the States, the powers and duties of the returning or canvassing boards have been held to be merely ministerial, consisting in the aggregation of the several returns from the various voting precincts throughout the State. The question, however, whether the powers and duties of a particular canvassing board are merely ministerial or not will always depend upon the law under which they act; and it does not follow that because, as a general rule, the powers of canvassing boards are merely ministerial that they are so in any particular instance.

Action of the supreme court of South Carolina.

While the board of State canvassers were engaged in the canvassing of the elections proceedings were instituted in the supreme court of the State for the purpose of controlling their action. And it is proper, in order to meet objections, to consider the relations of those proceedings to the present question.

Those proceedings consisted of the petition of the Democratic candidates for the various State offices; first, for a writ of prohibition to restrain the State canvassers from doing anything except the ministerial acts of ascertaining from the returns and statements forwarded by the boards of county canvassers for the respective counties the persons who have received the highest number of votes for the offices for which they were candidates, and declare the same and certify the statements to the secretary of state; second, for a writ of mandamus to compel the board to ascertain from the said returns and statements the persons who received the greatest number of votes for the offices for which they were candidates, and to declare the same and certify such declaration to the secretary of state, &c.

Upon this petition a rule to show cause was granted by the court, to which a return was made by the board of State canvassers, setting forth the powers conferred on them by the statute; alleging that they were then proceeding to discharge their whole duty according to the constitution and laws of the State, &c. Thereupon the court made an order commanding the board to proceed to aggregate the statements forwarded to them by the boards of county canvassers, and ascertain the persons who have received the greatest number of votes for the offices for which they were candidates, respectively, at the general election, and to certify their action in the premises under this order of the court.

The board accordingly made a return to the court under this order, giving the various aggregates of the votes for the various candidates as they appeared on the face of the county canvassers' return. The portion of this return relating to the counties of Edgefield and Laurens is as follows:

"The board of State canvassers, respondents herein, hereby certify that it appears by the statements of the several boards of county canvassers laid before the board that the following named persons have received the number of votes set opposite their respective names for the several offices designated, namely:

EDGEFIELD COUNTY.

SENATOR.

M. W. Gary	6,368
L. Cain	3,121

NOTE.—This county is allowed one senator.

REPRESENTATIVES.

W. S. Allen	6,250
J. C. Sheppard	6,250
James Callison	6,245
T. E. Jennings	6,250
H. A. Shaw	6,251
Paris Simpkins	3,123
Elisha B. Harris	3,118
David Graham	3,120
Archie Weldon	3,118
Augustus Simpkins	3,119

NOTE.—This county is allowed five representatives.

LAURENS COUNTY.

SENATOR.

R. S. Todd	2,898
J. Y. P. Owens	1,813

NOTE.—This county is allowed one senator.

REPRESENTATIVES.

J. B. Humbert	2,911
J. Washington Watts	2,909
D. Wade Anderson	2,908
A. T. B. Hunter	1,811
W. H. Rutherford	1,810
Harry McDaniel	1,809

NOTE.—This county is allowed three representatives.

"The board further certifies that 'this statement is made to the court in obedience to its order of November 17, 1876, but is respectfully submitted that under the present proceedings in this court this board is not by law compelled to report any of its actions to the court.'

* * * * * * *

"This board further shows to this court that allegations and evidences of fraud have been filed with this board as to the election held in Edgefield County by many of the managers of election in said county; but similar allegations have been made and filed as to one or more precincts in Barnwell County; that the statements of the commissioners of election for Laurens County laid before this board were signed by two commissioners only, one of whom signed, as he certifies, under protest; said commissioner has also filed an affidavit that the reason he signed said statements was because he was in fear of bodily injury if he refused to do so; that various protests and notices of contest have been filed from many other counties of the State, alleging irregularities on the part of election officers, illegal voting, &c.

"That in view of said allegations, protests, and notices of contests, none of which have been heard or passed upon by this board, because of the pendency of these proceedings, this board cannot, in their opinion, properly ascertain and certify who have actually received the greater number of legal votes in said counties for the several offices voted for unless they have the opportunity of investigating these allegations and hearing evidence upon these protests."

This statement having been made to the court, the next day the court of its own motion made the following order:

"*It is ordered*, That a writ of peremptory mandamus do issue, directed to the chairman and members of the board of State canvassers and the secretary of state, commanding the said board forthwith to declare duly elected to the offices of senators and members of the house of representatives the persons who by said certificate of the said board to this court have received the greatest number of votes therefor, and to forthwith deliver a certified statement and declaration thereof to the secretary of state; and commanding the secretary of state to make the proper record thereof in his office, and without delay transmit a copy thereof, under the seal of his office, to each person thereby declared to be elected, a like copy to the governor, and cause a copy thereof to be printed in one or more public newspapers of this State."

Before this latter order was served upon the members of the board, the ten days allowed by law having expired, the board completed its canvass of the election returns, declared the election, and adjourned *sine die*.

The course of the supreme court in this case is deserving of notice in several respects.

First. When the petition and the return were before the court there had been no refusal

by the board to do any duty imposed upon it. The board had only begun their work as canvassers when the court issued its order in mandamus. It is an elementary principle of law that a refusal to perform a duty must precede an application for mandamus. Eight of the ten days within which they could act still remained.

Second. The court immediately issued an order requiring the board to report to the court itself the result of the face of the returns. This was an order for which no foundation had been laid in the proceedings. It was wholly irregular and without authority of law. Such an order could only have been granted, if at all, by way of a writ of certiorari, which had not been prayed for in this case.

The object of this order cannot be mistaken. It was to secure for the court the information necessary to determine beforehand the order to be made in order to accomplish a desired end. Can any other purpose be suggested? The court is asked in the petition for a writ of mandamus to order the board to aggregate the returns and certify the results. The court say in reply, let the board show us first what the results will be. When those results were presented to the court then the order was made to declare those persons elected who, according to the said report made to the court, had received the highest number of votes.

Third. Aside from all these evidences of partisan purposes, the action of the supreme court was wholly without jurisdiction. This is true as to all the officers voted for at that election, and particularly of members of the legislature. It was in fact a plain usurpation of power, whereby the functions of the board of State canvassers were usurped by the supreme court, and the board required by the court to declare a specified result dictated to it by the court.

After the board had acted the court could by *quo warranto* have reversed the action of the board in cases where such a writ would lie; but as to members of the legislature it was without jurisdiction at any time to entertain the case. The house of representatives, under the constitution, had sole jurisdiction of the matter.

Such action on the part of the court is without precedent in South Carolina. It is believed to be without precedent in any State.

The board had a right to reach a conclusion uninfluenced and uncontrolled by any power. If it acted wrongly or illegally, its action could by various means be reviewed and corrected.

No power could rightfully compel any decision, and especially any particular decision, until the expiration of the ten days allowed for its action.

The only subsequent action of the court in this case was the imprisonment of the board for contempt of the order which was not served on them till after their adjournment *sine die*.

Cushing, in his Law and Practice of Legislative Assemblies (page 52, section 141), speaking of returning officers, says:

"It remains to be observed, in conclusion, that the proceedings of these (returning) officers, from the necessity of the case, are, in the first instance, uncontrollable by any other authority whatever; so that if, on the one hand, notwithstanding an election has been effected, the returning officers neglect or refuse to make the proper return, the party thereby injured is without remedy or orders until the assembly to which he is chosen has examined his case and adjudged him to be duly elected; and, on the other hand, if the returning officers make a return when no election has in fact taken place, or of one who is not eligible, the person returned will not only be entitled, but it is his duty, to assume and discharge the functions of a member until his return and election be adjudged void."

After the final adjournment of the board of State canvassers, November 22, 1876, the order of the supreme court already recited was served upon them.

That the board then had no power to reassemble and act upon the returns is clear.—(Cooley on Const. Lim., 622; Clark *vs.* Buchanan, 2 Minn., 346; 33 N. Y., 603.)

In Minnesota it has been held, in accordance with the principle just stated, that if the board of canvassers, after canvassing the votes, adjourn without day, their power in the premises is at an end, and they cannot reassemble; neither can a court, by mandamus, compel them to reassemble, or give them any power in case of their doing so.—(Clark *vs.* Buchanan, 2 Minn., 346. See also Gooding *vs.* Wilson, 42d Congress; State *vs.* Daumerth, 21 Ohio, 216.)

The decision of the supreme court of South Carolina was subsequently reviewed on habeas corpus and set aside by Hon. Hugh L. Bond, of the United States circuit court.

The State supreme court proceeded to imprison the members of the board for contempt.

After their imprisonment a writ of habeas corpus was sued out before Judge Bond, United States circuit judge, sitting at Columbia. Judge Bond delivered an elaborate decision in which he held that the proceedings in the supreme court of the State were without jurisdiction, and that its order was void. He says:

"The first question to be decided at this time and upon this motion is whether or not

the supreme court of the State of South Carolina had jurisdiction to hear and determine the matter before it."

After quoting the sections of the constitution which confer upon the supreme court its jurisdiction, and the sections of the statute which define the powers of the board of canvassers, he continues:

"The objection to the jurisdiction of the supreme court made by the petitioners is that they are a part of the executive department of the government charged with the execution of a law of the State, and that they alone are authorized to canvass the votes, and that they are not subject in the exercise of their functions to the control of the judicial branch of the government.

"The Supreme Court of the United States in a very able opinion by Mr. Justice Miller, in the case of Gaines *vs.* Thompson, 7 Wall., 347, has very clearly determined what the law is on this subject, and that is, 'that if it appear that the act which the court is asked to compel the officer of the executive department of the government to do be purely ministerial, the court having jurisdiction to issue the writ of mandamus may compel the executive officer to perform his duty; but if the act required to be done by the executive officer be not merely ministerial but discretionary, or one about which he is to exercise his judgment, a court cannot by mandamus act directly upon the officer and guide and control his judgment or discretion in the matters committed to his care in the ordinary exercise of official duty.' And the court further says that 'the interference of the courts with the performance of the ordinary duties of the executive departments would be productive of nothing but mischief, and we are quite satisfied that such a power was never intended to be given them.' And for this Mr. Justice Miller quotes the opinion of Chief-Justice Taney in the case of the Commissioner of Patents *vs.* Whitely, 4 Wall., 522, and the law is stated to the same effect in a very celebrated case in Maryland, by Chief-Justice Bowie, Miles *vs.* Bradford, 22 Md. Rep., 170, a case where the power of the governor to canvass the votes was not so broadly given as in the case at bar.

"That the duty of this board of canvassers was not merely ministerial, but that they were clothed with a large discretion, it seems to me is very plain. They were not merely to take the returns and aggregate them. They were to canvass them. That is, they were to examine, to sift, to scrutinize them, which implies a power to reject such as were not lawful in their judgment; and more, they were to receive all cases under protest or contest that might arise when the power to do so did not by the constitution reside in some other body.

"They were the executive officers appointed to declare the election of such persons as had in their judgment the majority of the legal votes cast. If they decided erroneously or falsely the remedy of those candidates who thought themselves wronged was by *quo warranto;* but no court had the jurisdiction to compel the board of State canvassers to do otherwise than their own judgment dictated.

"It remains now to be seen what the court was asked to do by the relators. Their suggestion sets forth 'that the board is proceeding to hear and determine all matters of protest and contest before them in regard to the election of persons who were candidates at the general election, and is proceeding to certify their determination in such contests and protests to the secretary of state.' And they pray that a writ of mandamus may issue commanding them to ascertain from 'the managers' returns and statements forwarded to them by the boards of county canvassers, the persons who at the general election on the said 7th day of November, ultimo, had the highest number of votes; and commanding them and compelling them to revoke and annul any determination or decision which they may have made in any case of contest or protest, if any such there be.'

"Under the cases cited in the opinion of the Supreme Court of the United States, Gaines *vs.* Thompson, 7 Wall., 347, above referred to, I am of opinion that the supreme court of the State of South Carolina had no jurisdiction to entertain any such 'suggestion' or 'petition.' * * * The board of State canvassers is required to meet on the 10th day of November for the purpose of sifting, scrutinizing, not merely aggregating, the statements of the county boards. * * *

"We have shown from the 'suggestion' itself that in our judgment the court had no jurisdiction to entertain it, and though the returns (to this writ) show that the parties are in custody solely for not obeying the mandate of the court respecting State officers, it is our duty to go behind the returns and look at the case as it presented itself to the supreme court at its inception. What the relators asked the court to do in their original suggestion is perfectly plain, and we have above quoted the paragraph of the 'suggestion' which constituted the ground of complaint of the relators. In my judgment the whole matter was beyond the jurisdiction of the supreme court, and any order passed by them upon such 'suggestion' is void. * * *

"I think this proceeding in the supreme court was beyond the jurisdiction of that court; that the board of State canvassers were clothed under the law with discretionary

'hich required them to discriminate the votes, to determine and certify the can-
lected after scrutiny, and that they were a part of the executive department of
nment and were in no wise subject to the control as to what they should do
' had commenced to perform that duty of the judicial department."
ıcur in the conclusions reached by Judge Bond.
mportance in argument was attached to the action of the Wallace house in
pon and affirming the right of the persons who claimed to represent Edgefield
ens Counties. From the journal of the Wallace house it appears that on De-
the credentials of the persons claiming to be elected for Edgefield and Laurens
were referred to the Committee on Privileges and Elections to investigate and
to their right to hold seats.
ember 7 this committee reported that the persons referred to were duly elected
.ed to their seats, and this report was adopted.
ıef and only real significance of this action is that it is evidence of the want
ınce on the part of the Wallace house in the legality of its own original organ-
s well as in the right of the persons claiming to be elected for Edgefield and
Counties to take part in the proceedings of that body.
im is that on the 7th of December, when the Wallace house adopted the reso-
ıting the Edgefield and Laurens members, that house contained sixty-three
g board members, and hence that the action of the house in seating those mem-
ot be questioned. It is to be noted first that this claim is a concession that
e to be a valid house must have a majority of one hundred and twenty-four,
he certificates of the canvassing board.
be so, then the Wallace house on the day of its organization was clearly without
to do business, for it had only fifty-seven members holding such certificates.
members who joined that house between November 29 and December 7 had
worn in as members of the Mackey house, and had acted with that house in
its organization.
the Mackey house was a valid house of representatives at its organization, the
ıt withdrawal of these six members to join another body could have no effect
impair the validity of the Mackey house or to cure the invalidity of the Wal-
ɔ. If their absence had reduced the body below a quorum the house could do
ss, but, in point of fact, their absence did not reduce the Mackey house below
.
same day, December 7, the Wallace house also adopted resolutions declaring
election of the speaker and subordinate officers of that house on the 28th of
r.
tion is another evidence that the Wallace house regarded its organization on
of November as at least of very doubtful validity.

Organization of the house of representatives.

; now from questions affecting the legality of the action of the board of can-
e come to questions concerning the mode of organizing the Mackey house, and
the exclusion therefrom of all persons not declared elected by the canvassing

al and parliamentary principles on which the Mackey house was organized
ated as follows:
That no persons except those declared elected and duly returned by the board
canvassers and holding certificates of the secretary of state were entitled by
age to be placed upon the roll.—(Cushing, sections 229 and 240.)
That the organization of the house must be effected by those persons only
ction had thus been declared by the board of State canvassers and certified by
ary of state in accordance with the law of the State.
That all other persons claiming to be entitled to seats in the house of repre-
must submit their claims to the house after its organization by the members
ts were undisputed.—(Cushing, sections 229 and 240.)
o be observed in the outset that when a number of persons come together, each
to be a member of a legislative body, those persons who hold the usual creden-
embership are alone entitled to participate in the organization."—(McCrary's
lections, 377.)
pparent that the case of Sykes *vs.* Spencer is not in conflict with the rule that
anization of legislative bodies persons holding the usual credentials are alone
l to act."—(McCrary's Law of Elections, 392.)
well-known case of Kerr *vs.* Trego, 47 Pa. S. R. —, cited in Brightly's Leading
Elections (page 632), Chief-Justice Lowrie, of the supreme court of Pennsyl-
d down the following principle:
e division of a body that ought to be a unit the test of which represents the

legitimate social succession is which of them has maintained the regular forms of organization according to the law and usages of the body, or, in the absence of these, according to the laws, customs, and usages of similar bodies in like cases, or in analogy to them. This is the uniform rule in such cases."

And in the same case, speaking of the custom of the clerk of the former organization taking charge of the organization of the new body, he says (page 638):

"It has the sanction of the common usage of every public body into which only a portion of new members is annually elected. It is the periodical form of reorganizing the select council and the senate of the State, and also the form of organizing the Senate of the United States on the meeting of a new Congress, when the Vice-President does not appear and the last President *pro tempore* does; and we understand this custom to be uniform throughout the United States, though this is not very important. And when there is a President whose term as a member has expired, then the functions of the clerks continue, and they, in all cases, act as the organs of reorganizing the body, and continue to hold office until their successors are chosen and qualified. Our State and Federal Houses of Representatives are illustration enough of this. So universal is this mode of organizing all sorts of legislative and municipal bodies that all departures from it can be justified only as founded on special and peculiar usages or on positive legislation. Whenever this form is adhered to, a schism of the body becomes impossible, though the process of organization may be very tardy.

"It is objected that a rule that attributes so much power to the officers of the previous year gives them an advantage which they may use arbitrarily and fraudulently against the new members, so as to secure to themselves an illegitimate majority. No doubt this may be so; but no law can guard against such frauds so as to entirely prevent them, just as it cannot entirely prevent stealing and perjury and bribery; the people are liable to such frauds at every step in the processes of an election or organization. But so much more the need for order and law in this part of the process; the law can dictate that, though it cannot furnish honesty and sound judgment to the actors in it. That the law and order that we have announced have existed so long and so generally is proof, at least, that they are better than no law at all."

In Wilson's Digest of Parliamentary Law, section 1603, page 221, this author says:

"At the commencement of every regular session the Clerk of the House opens the session by calling the names of members by States and Territories, if in Congress, and by counties if in State legislative assemblies. If a quorum answer to their names, he will put the following question: 'Is it the pleasure of the House to proceed to the election of a Speaker?' If decided in the affirmative, tellers are generally appointed to conduct the vote."

This seems to be the universal custom in the organization of legislative bodies, and such custom not only prevails in South Carolina, but is specially established by the rules of the house of representatives of this State.

Rule 80 of the rules of the house of representatives of this State is as follows:

"In all cases not determined by these rules, or by the laws, or by the constitution of this State, as ratified on the 14th, 15th, and 16th days of April, 1868, this house shall conform to the parliamentary law which governs the House of Representatives of the United States Congress."

Rule 81 is as follows:

"These rules shall be the rules of the house of representatives of the present and succeeding general assemblies until otherwise ordered."

Turning now to Barclay's Digest (pages 44 *et seq.*, and 126), we find that the law governing the House of Representatives of the United States Congress requires the Clerk of the last House to make up the roll of the members of the new House by placing thereon the names of such persons only whose credentials show "that they were regularly elected"; that having ascertained, by a call of this roll, that a quorum is present, the Clerk then proceeds to call the names of the members for the choice of a Speaker; the Speaker being chosen, assumes the duties of presiding officer, and, after swearing in the members, the oath of office being first administered to him, proceeds to complete the organization. Pending the election of a Speaker the Clerk preserves order and decorum.

Upon the question of the right of the claimants from Edgefield and Laurens Counties to be placed upon the roll, and to participate in the organization, the following citation from Cushing's Law and Practice of Legislative Assemblies, section 229, page 87, is in point:

"The right to assume the functions of a member, in the first instance, and to participate in the preliminary proceedings and organization, depends wholly and exclusively upon the return or certificate of election; those persons who have been declared elected and are duly returned being considered as members until their election is investigated and set aside, and those who are not so returned being excluded from exercising the function of members, even though duly elected, until their election is investigated and their right admitted."

To the same effect is section 141 (page 52) of the same work, which has already been cited in connection with the action of the Supreme Court.

In section 238 (page 91) of the same work, in discussing the principles of parliamentary law governing the assembly and organization of legislative bodies, Cushing says:

"Hence it has occurred more than once that struggles for political power have begun among the members of our legislative assemblies, even before their organization; and it has happened on the one hand that persons whose rights of membership were in dispute, and who had not the legal and regular evidence of election, have taken upon themselves the functions of members; and, on the other, that persons having the legal evidence of membership have been excluded from participating in the proceedings."

In order to avoid such difficulties, this distinguished writer lays down the following principles in section 240, which are applicable to the question now under consideration:

"That no person who is not duly returned is a member, even though legally elected, until his election is established.

"That those members who are duly returned, and they alone (the members whose rights are to be determined being excluded), constitute a judicial tribunal for the decision of all questions of this nature."

In Kerr *vs.* Trego (Brightly's Election Cases, page 636), already cited, the Chief-Justice said:

"In all bodies that are under law, the law is that where there has been an authorized election for the office in controversy the certificate of election which is sanctioned by law or usage is a *prima facie* written title to the office, and can be set aside only by a contest in the form prescribed by law. This is not now disputed. No doubt this gives great power to dishonest election officers; but we know no remedy for this but by the choice of honest men."

It is proper here in this connection to again refer to the language already quoted from the same authority (page 638):

"It is objected that a rule that attributes so much power to the officers of the previous year gives them an advantage which they may use arbitrarily and fraudulently against the new members, so as to secure to themselves an illegitimate majority. No doubt this may be so; but no law can guard against such frauds so as to entirely prevent them, just as it cannot entirely prevent stealing and perjury and bribery; the people are liable to such frauds at every step in the process of an election or organization. But so much the more need for order and law in this part of the processes; the law can dictate that, though it cannot furnish honesty and sound judgment to the actors in it. That the law and order which we have announced have existed so long and so generally is proof, at least, that they are better than no law at all."

Applying the law as now stated to the facts in the present instance, it is clear, first, that there were no representatives from Edgefield and Laurens Counties having certificates of election according to the law and usage of this State; and second, that under the law, without such certificates, the clerk had no right to place the names of any persons upon the roll of the house as representatives from these counties.

It follows that fifty-nine members of the house of representatives who met in the State-house at Columbia and organized by the election of E. W. M. Mackey as speaker were lawfully convened, were lawfully organized, and, under the constitution of South Carolina, constituted the lawful house of representatives of that State. Though less than a majority of all the possible members of that body (one hundred and twenty-four), there was a "quorum to do business," which consisted of a "majority of the members chosen"—a majority of all those holding lawful certificates of election.

This house of representatives, in connection with the unquestioned senate, constituting together, as they did, the legislature of the State of South Carolina, proceeded on the 12th day of December, 1876, to the election of a Senator to represent that State in the Senate of the United States for the term of six years to commence on the 4th of March, 1877. The election was duly held, duly determined and declared, and D. T. Corbin was duly and formally declared elected Senator, and subsequently he was duly commissioned as such by the governor of the State. He is, therefore, entitled, on the merits of his case, to a seat in the Senate as a Senator from South Carolina for the term of six years commencing on the 4th of March, A. D. 1877.

M. C. Butler's case.

Under the view taken of the facts relative to Mr. Corbin's election and the legal effect thereof, it would seem unnecessary to discuss the grounds of Mr. Butler's claim to be Senator, as it is impossible that he should have been legally elected if Mr. Corbin had already been elected. That the legislature cannot, after electing one person as Senator, subsequently set aside this election and elect another person to the same seat has been decided by the Senate in the case of Potter *vs.* Robbins, from Rhode Island. But we

think it is not improper in this connection to consider briefly the facts in his case, and upon which his title depends.

The fifty-seven Democratic members of the house of representatives holding certificates of election under the determination of the board of State canvassers on the 28th day of November, 1876, declined to enter the State-house and unite with the other fifty-nine Republican members of the house of representatives there assembled; but, by themselves, assembled in a private hall, called Carolina Hall, in the city of Columbia. Eight other persons, five from Edgefield County and three from Laurens County, claiming to be members of the house of representatives elect, but holding no certificates of election from the board of State canvassers, assembled with said fifty-seven members at Carolina Hall. This body, so made up, organized by electing William H. Wallace speaker. In the organization of this body it was assumed that the fifty-seven members with certificates of election and the eight persons claiming seats from Edgefield and Laurens, but who had no certificates of election, constituted a quorum of the house of representatives, and the same was competent to do business.

On the 4th, 5th, and 6th of December, 1876, six members of the house of representatives assembled at the State-house, and who had been regularly sworn in as members of that house and had taken part in its organization, retired therefrom, and joined the Wallace house at Carolina Hall. One of them subsequently returned to his seat in the body at the State-house.

This body, at Carolina Hall, on the 12th day of December, 1876, this being the second Tuesday after the meeting and pretended organization thereof, proceeded to vote for a United States Senator, taking one ballot, which resulted in no choice. From day to day this house continued to vote for a United States Senator, but without making any choice, until the 19th of December, 1876, when, having then present eleven members of the senate (six less than a majority of that body), the election resulted in the choice of M. C. Butler as Senator. The senate, as such, never recognized in any manner this assemblage at Carolina Hall as the house of representatives; but always recognized the other body assembled in the State-house as the lawful house of representatives.

Was the election of Mr. Butler under these circumstances valid? It is impossible that it can be so regarded.

There was no quorum, no majority of the members chosen at the then recent election, present. As already stated, one hundred and sixteen members of the house of representatives had been chosen at the recent election, and no more. Of this number fifty-nine were necessary for a "quorum to do business," and there were but fifty-seven here present. Such a body could not lawfully organize as a house of representatives, and all its pretended acts were void. Again, it is not possible to recognize this body as the legislature of South Carolina, which under the United States Constitution alone could elect a Senator.

The legislature of the State of South Carolina consists, under the constitution of that State, of a senate and house of representatives.

A quorum of those two bodies must each meet and organize, and they must recognize each other before they can be considered the legislature of the State. Until this is done the legislature is not organized.

This body never had a senate recognizing and corresponding with it. Without such a body, even if itself lawful, it was nothing in law, and could do nothing as a legislative body. It did not, in fact, during its whole session do any legislative act or pretend that it could do any. It recognized its own impotency in this respect, but, strange inconsistency, it made a dash at the election of a United States Senator.

The defects in Mr. Butler's title to a seat in the Senate as Senator from the State of South Carolina may be stated briefly as follows:

1. There was no vacancy to be filled at the time of his election on December 19, 1876, as Mr. Corbin had been lawfully elected to said office on the 12th of December, 1876.

2. The house of representatives that assumed to elect Mr. Butler had no quorum at the time it was organized, and was never, therefore, a lawful body.

The additions made to it by recruits from the house of representatives assembled in the State-house did not make it a lawful body. If that house was a lawful body at its organization, it would so remain, notwithstanding the absence of five of its members.

If, by their absence, it was reduced below a quorum, no business could be done except to adjourn or send for the absent members.

But that house was not in fact at any time reduced below a quorum. It remained intact from the day of its organization, November 28, 1876, till December 22, 1876, following, when, in connection with the senate, it adjourned.

3. But admitting all that is claimed by Mr. Butler for the Wallace house at Carolina Hall, that it was lawfully organized and had a quorum of the house present, still, while this would invalidate Mr. Corbin's election, it would not make valid Mr. Butler's election. The single and isolated house of representatives of South Carolina cannot by

any process of reasoning be held to constitute the legislature of that State. The constitution of that State requires a senate and house of representatives for that purpose. But the Wallace house had no senate to recognize it. It stood isolated and alone, and, so standing, it could originate no lawful action. It could no more elect a Senator than it could enact laws.

The following resolution is submitted as the determination of the committee upon the merits of this controversy:

Resolved, That David T. Corbin was, on the 12th day of December, A. D. 1876, duly elected by the legislature of the State of South Carolina a Senator from that State in the Congress of the United States for the term of six years commencing on the 4th day of March, A. D. 1877, and that, as such, he is entitled to have the oath of office administered to him.

VIEWS OF THE MINORITY.

The undersigned members of the Committee on Privileges and Elections, to which ommittee was referred the petition of David T. Corbin, praying the Senate "to inquire ito, hear, and determine on their merits the claim and right of the petitioner to a seat 1 the Senate from the State of South Carolina for the term of six years commencing on he 4th day of March, A. D. 1877," being unable to agree with the reasoning and conusion of the majority of the committee, respectfully submit the following as their views 1 the premises.

On the 7th of March, 1877, the credentials of David T. Corbin and M. C. Butler, each aiming the seat as Senator from South Carolina, were ordered to lie on the table and 1 referred to the Committee on Privileges and Elections when appointed. Two days ereafter the committee was appointed, and received the credentials of both claimants r the seat.

Mr. Butler filed a printed statement setting forth the issues of fact and law upon which 1 claimed the seat.

Mr. Corbin also filed a like statement setting forth the issues of fact and law upon which 1 claimed the seat.

Replies to the statements thus made were also filed.

On examination of the issues thus made up there seemed to be no material issue of :t between the contestants, and the question as to which of them, or whether either, is duly elected by a legal legislature was one of law.

In this condition the contest remained until the 20th of November, 1877, and on is latter day a motion was made in the Senate "that the Committee on Privileges and ections be discharged from the consideration of the credentials of M. C. Butler, of uth Carolina." The reason alleged for this motion was that the facts were all stated the records furnished by the contestants; that neither of the contestants desired to ke any testimony *aliunde*, and that the question of law could be debated and decided the Senate as well without as with a report from the committee.

On the 27th of November, after elaborate debate, this resolution to discharge the committee was accepted by the Senate, and after further debate, and after the statements made id printed in behalf of Mr. Corbin and arguments on both sides had been read and made in e Senate, the Senate agreed to a motiton to swear in Mr. Butler, and he was, on the 30th November, sworn in as the Senator from South Carolina for the term in contest. A ote admitting one contestant to a seat is certainly a vote denying the same seat to iother contestant when both contestants are parties to the issue. No motion was made reconsider this action of the Senate, and no reservation was made looking to any furier contest between the claimants. On the 26th of March, 1878, and during a subseient session of Congress, the petition now under consideration by Mr. Corbin, asking the enate "to inquire into, hear, and determine his right and claim" to the same seat in ie Senate was referred to this committee.

In considering this petition the facts which have been presented to this committee are recisely the same which were presented on the former consideration of this case. Not new fact has been presented, nor offered to be presented, and not an old fact has been ithdrawn or modified, nor offered to be withdrawn or modified. The arguments now iade have been made from the same statements and briefs filed on the former hearing, id not a new question of law has been presented except the issue of *res adjudicata*. o charge of fraud has been made against the former decision. No allegation that testiiony was before excluded which ought to have been admitted, or that testimony was admitted which ought to have been excluded; no request by either party to produce testiiony has been denied, and no pretense that testimony then offered and excluded can ow be produced. The jurisdiction is the same; the parties are the same; the subjectiatter of contest is the same; the facts are the same, and the questions of law are the ime. The petition now before us is a mere, sheer, naked proposition that the Senate at subsequent session shall revote on the identical questions, facts, and issues on which ie Senate voted and decided at a former session.

Without going into a tedious and unnecessary review of the authorities and cases to be found in the books, we deem it sufficient to say that no demand like that contained in the petition of Mr. Corbin was ever granted by this Senate, nor, as we believe, by any legislative body.

In the case of Bright and Fitch, in the Thirty-fifth Congress, the parties to the rehearing asked were new and different, and had not before been heard, and the rehearing itself was asked in a memorial from the legislature of the State of Indiana. But because "all the facts and questions of law involved were as fully known and presented to the Senate" on the former hearing as they were then presented in the memorial of the legislature asking a rehearing, it was held that the judgment first rendered by the Senate "was final, and precluded further inquiry into the subject."

If, on the former hearing, Mr. Corbin had been denied the privilege of introducing material facts which he offered to produce; if he presented material facts now which were then unknown; if all the facts and questions of law now known and presented were not then as fully known and presented, the undersigned will not undertake to say his petition for a rehearing ought not in justice and right to be gravely heard and considered on the merits. But as Mr. Corbin himself has suggested no new facts or questions of law, and as we well know that all the facts and questions of law now known and presented were then quite as well known and presented both to the committee and the Senate, we cannot regard his petition for another vote as entitled to further consideration.

If, however, a majority of the Senate shall differ with us in the view we have presented, and shall, without precedent, without law and without reason, determine to re-examine on its merits the title of Mr. Corbin to the seat which he claims in the Senate, we submit that the former decision, excluding him from that seat, was right, and ought not to be reversed.

There is no controversy between the contestants about the facts, and the only question presented is one of law. The only real question is, whether the house of representatives of the legislature which it is claimed elected Mr. Corbin was a legal house or a legal quorum of a house under the constitution and laws of South Carolina.

By section 4, Article II, of the constitution, it is is provided that "the house of representatives shall consist of one hundred and twenty-four members."

By section 14, Article II, it is provided that "a majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as may be provided by law."

It is difficult to see how language could more plainly define what should be a house, or what should be a quorum of a house, or what only a less number than a quorum had power to do. Nor is there anything in law, morals, or party exigency which can justify a resort to construction or sophistry to confuse such plain language. The number of members who assembled in what is called the Mackey house, which pretended to elect Corbin, was fifty-nine. Clearly this was neither a house nor the quorum of a house, as plainly defined by the constitution of the State, and this number had no power except to adjourn from day to day and compel the attendance of absent members. But this number proceeded to organize as a legal quorum to do business.

The pretext for this extraordinary assumption of power by fifty-nine members was that the board of State canvassers had only issued certificates of election to one hundred and sixteen members, and the claim is that fifty-nine is a majority of one hundred and sixteen. But this very statement admits that a quorum of the house was certified as elected. The fifty-nine, then, are left without excuse for failing to exercise their only power under the constitution, "to compel the attendance of absent members." But the facts show that the people in fact elected one hundred and twenty-four members—a full house. The precinct commissioners and the county commissioners of election, in all the counties, respectively, made out and forwarded the statements required by law showing the votes cast at the election. The board of State canvassers refused to cast up the votes in the counties of Edgefield and Laurens, under the shallow pretext that they were unable to determine whether the elections in those counties were legal. They refused to discharge their plain ministerial duty of casting up the votes and thereby "determine and declare what persons had been by the greatest number of votes duly elected," but excused themselves from this duty by pretending they were not able to determine whether there had been legal elections in those counties! This was a question which, under the constitution, each house alone had authority to determine, and which the board of State canvassers, by plain language of the act creating it, is forbidden to determine.

In due time, also, the house of representatives did determine that there had been elections held in the counties of Edgefield and Laurens, and the returns very plainly showed who had been elected, and, in fact, the full house of one hundred and twenty-four members were elected. Both in fact and law, therefore, fifty-nine was not a quorum of the house to do business, and Mr. Corbin was not elected by a legal legislature.

he facts in this case show very plainly that the board of State canvassers were guilty disreputable attempt by mere trickery to defeat the result of the election by the le, and such conduct should not receive the countenance of the Senate.
ie undersigned, therefore, recommend that the resolution to seat Mr. Corbin, reported he majority of the committee, be not adopted.

A. S. MERRIMON.
ELI SAULSBURY.
BENJ. H. HILL.

TUESDAY, *February* 25, 1879.

motion by Mr. Cameron, of Wisconsin, that the Senate proceed to the consideration e resolution reported by the Committee on Privileges and Elections declaring David rbin duly elected and entitled to a seat in the Senate as a Senator from the State uth Carolina, it was determined in the negative—yeas 25, nays 36.
motion by Mr. Conkling, the yeas and nays being desired by one-fifth of the Sen- present,
ose who voted in the affirmative are Messrs. Allison, Anthony, Blaine, Booth, Cam- of Wisconsin, Chandler, Conkling, Dawes, Dorsey, Edmunds, Ferry, Hamlin, Hoar, , Ingalls, Kirkwood, McMillan, Mitchell, Morrill, Oglesby, Paddock, Plumb, Rollins, eigh, and Windom.
se who voted in the negative are Messrs. Bailey, Barnum, Bayard, Beck, Cameron nsylvania, Cockrell, Coke, Conover, Davis of Illinois, Davis of West Virginia, Den- aton, Garland, Gordon, Grover, Harris, Hereford, Hill, Jones of Florida, Kernan, r, McCreery, McDonald, McPherson, Matthews, Maxey, Merrimon, Morgan, Patter- ansom, Saulsbury, Shields, Voorhees, Wallace, Whyte, and Withers.
he motion was not agreed to.

FRIDAY, *February* 28, 1879.

Vice-President laid before the Senate a letter of David T. Corbin, withdrawing im to a seat in the Senate as Senator-elect from the State of South Carolina.
red, That it lie on the table.
opy of the letter is found on page 2028 of the Congressional Record, vol. viii,]

REIMBURSEMENT OF MR. BUTLER'S EXPENSES.

FRIDAY, *March* 17, 1882.

Hoar, from the Committee on Privileges and Elections, reported the following ion; which was read the first and second times by unanimous consent:
olved, That there be paid out of the contingent fund of the Senate the sum of $3,500 . Butler, a Senator from the State of South Carolina, in reimbursement of ex- necessarily incurred by him in defense of his title to his seat."

MONDAY, *March* 20, 1882.

notion by Mr. Hoar, the Senate proceeded to consider, as in Committee of the the following resolution reported by him from the Committee on Privileges and ns on the 17th instant, and no amendment being made it was reported to the

esolution to pay M. C. Butler the expenses incurred by him in defending his title t in the Senate."
red, That it be engrossed and read a third time.
said resolution was read the third time.
ved, That the Senate agree thereto.
debate is found on pages 2046, 2047 of the Congressional Record, vol. xiii, part 3.]

REIMBURSEMENT OF MR. CORBIN'S EXPENSES.

pay D. T. Corbin, late contestant for a seat in the United States Senate from the South Carolina, his expenses of such contest, $10,000."—*U. S. Statutes at Large*, *g.*, 1877–'79, vol. 20, page 400; *sundry civil appropriation bill*, approved March 3,

[Special session of Senate, March, 1877, and second session of the Forty-fifth Congress.]

LA FAYETTE GROVER,

Senator from Oregon from March 8, 1877, *till March* 3, 1883.

March 2, 1877, the credentials of Mr. Grover, elected for the term beginning March 4, 1877, were presented. March 7, a memorial of citizens of Oregon protesting against his admission to a seat were presented, and objection was made to the oaths being administered to Mr. Grover at that time. The following day he was admitted after debate. March 9, Mr. Grover submitted a resolution that the memorial be referred to the Committee on Privileges and Elections for investigation. The resolution was agreed to. December 14, 1877, the testimony taken was printed. June 15, 1878, the committee reported that the evidence taken did not sustain any of the charges. The committee asked to be discharged from the further consideration of the subject. One member of the committee, concurring in the conclusion of the committee, submitted views more at length, maintaining that a great injustice was done to Mr. Grover by the consideration given in the Senate to the vague charges preferred against him.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 2d sess. 44th and 45th Congs., and the report of the committee (except the testimony) from Senate Reports, 45th Cong., 2d sess., No. 540.

Special references to the debates of each day are inserted below.

FRIDAY, *March* 2, 1877.

Mr. Kelly presented the credentials of La Fayette Grover, elected a Senator by the legislature of Oregon for the term of six years commencing March 4, 1877; which were read.

WEDNESDAY, *March* 7, 1877.

Mr. Wallace moved that the oaths required by law be now administered to Mr. La Fayette Grover, whose credentials were heretofore presented as a Senator from the State of Oregon, and who appeared at the bar of the Senate.

Mr. Hamlin objected to the oath being now administered to Mr. Grover, for the reason that Mr. Mitchell, a Senator from Oregon, now absent from the Chamber, had received and desired to present to the Senate a memorial of citizens of Oregon remonstrating against the admission of the said Grover to a seat in the Senate.

Pending further debate upon the amendment of Mr. Bayard to the resolution of Mr. Blaine,

Mr. Mitchell asked, and by unanimous consent obtained, leave to present at this time a memorial of citizens of Oregon protesting against the admission of L. F. Grover to a seat in the Senate as a Senator from that State until certain charges therein made can be investigated and disproved.

Ordered, That the memorial lie on the table.

[A statement by Mr. Mitchell and a copy of the memorial are found on pages 22, 23 of the Congressional Record, vol. vi.]

THURSDAY, *March* 8, 1877.

Mr. Wallace submitted the following resolution for consideration:

"Whereas, under the Constitution and the laws and the practice of the Senate, La Fayette Grover, claiming to be a Senator from the State of Oregon—his credentials being regular and in due form and there being no contestant for the seat—and there being in said State but one body claiming to be the legislature, and but one person claiming to be the governor, and there being no doubt or dispute as to the existence of one legal, rightful State government, is entitled to admission to a seat in this body, on the *prima facie* case presented by such credentials, notwithstanding the objections contained in the petition of citizens of the State of Oregon against his admission: Therefore,

"*Resolved*, That the credentials of La Fayette Grover be taken from the table and the oaths of office be now administered to him.

"*Resolved, further*, That the petition of citizens of Oregon containing charges against La Fayette Grover lie on the table until the Committee on Privileges and Elections is organized, when they shall be referred to such committee, together with his credentials, with instructions to investigate such charges and report to the Senate as to their truth or falsity."

On the question to agree thereto,

After debate,

Mr. Whyte demanded a division of the question, and the question being first put on agreeing to the first resolution and preamble,

It was determined in the affirmative.

n recurring on the second resolution, Mr. Wallace, with the consent of the rew the same.

presented himself at the bar of the Senate, and the Vice-President having to him the oaths prescribed by law, he took his seat in the Senate.
e is found on pages 31–39 of the Congressional Record, vol. vi.]

FRIDAY, *March* 9, 1877.

submitted the following resolution; which was considered by unanimous agreed to, viz:
That the thirteen memorials heretofore presented to the Senate by Hon. J. purporting to be signed by 369 citizens of the State of Oregon, reciting that ly reported and generally believed that the election of L. F. Grover as a e United States was procured by bribery, corruption, and other unlawful egislature of the State of Oregon, and that the said L. F. Grover did cor- ndently issue a certificate of election to one E. A. Cronin as a Presidential ecember 6, 1876, and that the said L. F. Grover did bear false witness be- e Committee on Privileges and Elections, on or about January 6, 1877, be o the Committee on Privileges and Elections, who shall thoroughly inves- ort upon the foregoing charges, with power to send for persons and papers."

WEDNESDAY, *March* 14, 1877.

ll submitted the following resolution for consideration:
That the Committee on Privileges and Elections be authorized to designate ee of three of its members who shall have authority to sit in the vacation e of taking testimony and making report to full committee at commence- ession in pursuance of the resolution of the Senate authorizing an investi- ertain charges preferred against La Fayette Grover, Senator from Oregon; ommittee shall have all the powers to send for persons and papers and ths that the full committee now has."

THURSDAY, *March* 15, 1877.

ll presented twenty-three petitions of citizens of Oregon, praying that L. be denied a seat in the Senate until certain charges preferred against him igated; which were referred to the Committee on Privileges and Elections.
proceeded to consider the resolution yesterday submitted by Mr. Mitch- ze the Committee on Privileges and Elections to appoint a subcommittee e recess for the investigation of certain charges against La Fayette Grover, the State of Oregon; and
bate, it was
at the further consideration thereof be postponed to to-morrow.
proceeding is taken from the Record. It does not appear in the Journal. found on page 42 of the Congressional Record, vol. vi.]

FRIDAY, *March* 16, 1877.

resumed, &c., and an amendment having been proposed by Mr. Saulsbury, bate,
by Mr. Allison, the Senate proceeded to the consideration of executive

e is found on page 43 of the Congressional Record, vol. vi.]

SATURDAY, *March* 17, 1877.

resumed the consideration of the resolution submitted by Mr. Mitchell on nt, to authorize the Committee on Privileges and Elections to appoint a to sit during the recess for the investigation of the charges against La Fay- Senator from the State of Oregon; and
n being on the amendment proposed by Mr. Saulsbury, viz: Strike out all l "resolved" and in lieu thereof insert:
Committee on Privileges and Elections, to which was referred a resolution relating to the election of La Fayette Grover as Senator from the State of d the said committee is, instructed to appoint the judge of the fourth judi- f said State a commissioner to take testimony relating to the matters re- said resolution, and the said commissioner so appointed shall have power , and it shall be his duty, to issue subpœnas for witnesses as well on behalf a Fayette Grover as against him, and to give due notice of the time and

place when and where the testimony will be taken. The testimony so taken shall be forwarded to the said committee, which shall report the same, with their conclusions thereon, at the next regular session of the Senate,"

On motion by Mr. Mitchell to amend the amendment by striking out all after the word "instructed" and in lieu thereof inserting:

"To appoint from its members a subcommittee of three, who shall take testimony relating to the matters referred to in said resolution and report to the full committee on the first Monday in December next; and for such purpose said subcommittee shall have power to sit in vacation; and if they deem expedient, go to the State of Oregon; and such committee shall have power to employ a clerk, stenographer, and sergeant-at-arms, and shall have all the powers of the general committee to administer oaths and send for persons and papers; and the expenses of such subcommittee, not exceeding $10,000, shall be paid out of the contingent fund of the Senate, upon vouchers to be approved by the chairman of such subcommittee,"

After debate,

It was determined in the affirmative.

On motion by Mr. Davis, of West Virginia, to amend the amendment as amended by striking out the work "clerk," it was determined in the negative—yeas 10, nays 34.

On motion by Mr. Davis, of West Virginia, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Beck, Davis of West Virginia, Dennis, Harris, Hereford, Hill, McCreery, McPherson, Wallace, and Whyte.

Those who voted in the negative are Messrs. Allison, Anthony, Bayard, Blaine, Bogy, Chaffee, Christiancy, Conkling, Davis of Illinois, Dorsey, Eaton, Garland, Hamlin, Ingalls, Johnston, Jones of Nevada, McMillan, Maxey, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Plumb, Randolph, Rollins, Sargent, Saulsbury, Saunders, Spencer, Teller, Wadleigh, and Windom.

So the amendment to the amendment was not agreed to.

On motion by Mr. Saulsbury to further amend the amendment by adding thereto the following:

"And that the said L. F. Grover shall be notified of the sessions of the said subcommittee, with the right to be present at the examination of witnesses,"

It was determined in the affirmative.

The amendment of Mr. Saulsbury, as amended, was then agreed to; and,

On the question to agree to the resolution as amended, as follows:

"*Resolved*, That the Committee on Privileges and Elections, to which was referred a resolution of the Senate relating to the election of La Fayette Grover as Senator from the State of Oregon, be, and the said committee is, instructed to appoint from its members a subcommittee of three, who shall take testimony relating to the matters referred to in said resolution, and report to the full committee on the first Monday in December next; and for such purpose such subcommittee shall have power to sit in vacation, and, if they deem expedient, go to the State of Oregon; and such subcommittee shall have power to employ a clerk, stenographer, and sergeant-at-arms, and shall have all the power of the general committee to administer oaths and send for persons and papers; and the expenses of such subcommittee, not exceeding $10,000, shall be paid out of the contingent fund of the Senate upon vouchers to be approved by the chairman of such subcommitte; and that the said L. F. Grover shall be notified of the sessions of the said subcommittee, with the right to be present at the examination of witnesses,"

It was determined in the affirmative—yeas 39, nays 8.

On motion by Mr. Whyte, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs. Allison, Anthony, Bayard, Blaine, Bogy, Booth, Bruce, Chaffee, Christiancy, Coke, Conkling, Davis of Illinois, Dorsey, Eaton, Garland, Hamlin, Hoar, Howe, Johnston, Jones of Nevada, McMillan, McPherson, Maxey, Mitchell, Morgan, Morrill, Morton, Oglesby, Paddock, Patterson, Randolph, Rollins, Sargent, Saunders, Spencer, Teller, Wadleigh, Windom, and Withers.

Those who voted in the negative are Messrs. Cockrell, Davis of West Virginia, Harris, Hereford, McCreery, Merrimon, Wallace, and Whyte.

So the resolution was agreed to.

[The debate is found on pages 43–46 of the Congressional Record, vol. vi.]

FRIDAY, *December* 14, 1877.

On motion by Mr. McMillan,

Ordered, That the testimony taken before the subcommittee of the Committee on Privileges and Elections, designated to investigate certain charges against La Fayette Grover, a Senator from the State of Oregon, be printed.

SATURDAY, *June* 15, 1878.

Mr. Wadleigh, from the Committee on Privileges and Elections, who were instructed by the resolution of the Senate of March 9, 1877, to investigate certain matters touching the election of La Fayette Grover as a Senator from the State of Oregon, submitted a report (No. 540), with a recommendation that the committee be discharged from the further consideration of the resolution, and that any member of said committee have leave to present to the Senate, at the present or the next session, his views in writing upon said testimony; and

Leave was granted as requested.

* * * * * * *

Mr. Saulsbury, from the Committee on Privileges and Elections, submitted his views on the question of the election of La Fayette Grover as a Senator from the State of Oregon, to accompany the report of the committee (No. 540) this day made.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Wadleigh (chairman), Mitchell, Cameron of Wisconsin, McMillan, Hoar, Ingalls, Saulsbury, Merrimon, and Hill.]

IN THE SENATE OF THE UNITED STATES.

JUNE 15, 1878.—Ordered to be printed.

Mr. Wadleigh, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom was referred the resolution of the Senate authorizing said committee to investigate and report upon charges that the election of La Fayette Grover as a Senator from the State of Oregon was procured by bribery, corruption, and other unlawful means, report that in their opinion the evidence taken does not sustain any of said charges against him.

Your committee therefore ask to be discharged from the further consideration of said resolution, and that any members of said committee have leave to present to the Senate at the present session or the next session their views in writing upon said testimony.

VIEWS OF MR. SAULSBURY.

Mr. Saulsbury, a member of the subcommittee on Privileges and Elections, appointed to take testimony in reference to the election of the Hon. L. F. Grover as Senator, concurring in the foregoing conclusion of the committee, submits more at length his own views.

At the special session of the Senate in March, 1877, the following resolution, offered by Senator Grover, was adopted, referring to the Committee on Privileges and Elections certain memorials which had been presented to the Senate, and requiring said committee to investigate the allegations therein contained. The resolution is in the following words:

"*Resolved*, That the thirteen memorials heretofore presented to the Senate by Hon. J. H. Mitchell, purporting to be signed by 369 citizens of the State of Oregon, reciting that it was currently reported and generally believed that the election of L. F. Grover as a Senator of the United States was procured by bribery, corruption, and other unlawful means in the legislature of the State of Oregon, and that the said L. F. Grover did corruptly and fraudulently issue a certificate of election to one E. A. Cronin as a Presidential elector on December 6, 1876, and that the said L. F. Grover did bear false witness before the Senate Committee on Privileges and Elections on or about January 6, 1877, be now referred to the Committee on Privileges and Elections, who shall thoroughly investigate and report upon the foregoing charges, with power to send for persons and papers."

The following is a copy of the memorials referred to in the foregoing resolution:

To the Senate of the United States:

Whereas it is currently reported and generally believed that L. F. Grover by bribery, the corrupt use of money, and other unlawful and dishonorable means procured his election to the Senate of the United States by the legislature of the State of Oregon at its last session; and

Whereas the said L. F. Grover, in obedience to a corrupt scheme to defraud the State of Oregon of its proper electoral vote, as the governor thereof did unlawfully, dishonestly, corruptly, and by acts of usurpation, declare elected to the office of Presidential elector for the State of Oregon, on the 6th day of December, 1876, and did issue a

certificate of election to one E. A. Cronin, who had been defeated by the people for said office by more than 1,000 majority; and

Whereas the said L. F. Grover did fraudulently undertake to sustain his said act by falsely testifying as a witness concerning the same before the Senate Committee on Privileges and Elections on or about the 6th day of January, 1877:

Now, therefore, we, the undersigned, citizens of the State of Oregon, earnestly but respectfully ask that the said L. F. Grover be denied a seat in the United States Senate as a Senator from the State of Oregon until the foregoing charges are thoroughly investigated and disproved.

M. L. WILMOT and others.

Subsequently during the same session a resolution was adopted by the Senate instructing the Committee on Privileges and Elections to appoint a subcommittee from its members to take testimony relating to the matters referred to in the said memorials and report the testimony taken to the full committee on the first Monday of the present session.

The following is the resolution last referred to:

"That the Committee on Privileges and Elections, to which was referred a resolution of the Senate relating to the election of La Fayette Grover as Senator from the State of Oregon, be, and the said committee is, instructed to appoint from its members a subcommittee of three, who shall take testimony relating to the matters referred to in said resolution and report to the full committee on the first Monday in December next; and for such purpose such subcommittee shall have power to sit in vacation and if they deem expedient go to the State of Oregon; and such subcommittee shall have power to employ a clerk, stenographer, and sergeant-at-arms, and shall have all the powers of the general committee to administer oaths and send for persons and papers; and the expenses of such subcommittee, not exceeding $10,000, shall be paid out of the contingent fund of the Senate upon vouchers to be presented by the chairman of such committee."

In obedience to said resolution a subcommittee consisting of the late Senator Morton, Senator McMillan, and the undersigned, was appointed, who proceeded to Portland, in the State of Oregon, and examined a large number of witnesses, whose testimony has already been printed by order of the Senate.

The undersigned, as a member of the subcommittee charged with the duty of making the investigations required by the first mentioned resolution, begs leave respectfully to submit his own conclusions from the evidence taken.

An examination of the testimony will show that the widest latitude was given to the investigation by the subcommittee. Witnesses were not restricted to matters within their own knowledge, but were allowed to testify as to their beliefs and suspicions, unsupported by any facts, and to narrate hearsay evidence of no higher character than the fugitive rumors which are not unfrequently current on the streets of a State capital preceding the election of a United States Senator.

It may be at times impossible for a legislative committee to apply to an investigation with which it is charged the rules which govern the admissibility of evidence in courts of justice, but the undersigned must be allowed to express his conviction that in an investigation into the truth of allegations affecting the personal honor of a member of the Senate, as well as his right to a seat in the body, no such wide departure should be allowed in the admission of testimony as the evidence in this case will show was permitted. While Senator Grover can have no cause to regret the latitude that was given to the inquiry into matters alleged against him or the regularity of his election, by reason of anything elicited against him or those to whom he owes his election to the Senate, it ought not to be allowed to become a precedent to govern similar investigations in the future.

The undersigned objected at the very commencement of the investigation to the latitude in the examination of witnesses which is usually allowed in investigations by legislative committees, and insisted on an observance, as far as possible, of the rules which obtain in courts of justice in that regard. Had his suggestion been adopted in practice, the testimony in this case would have been compressed into a very narrow compass, and would have excluded a large mass of irrelevant testimony taken by the subcommittee. The undersigned begs leave to refer to the objections which he made on this point, found at pages 9, 10, and 11 of the printed testimony.

Without reviewing in detail the testimony taken by the subcommittee, the undersigned has no hesitation in saying that, so far from justifying the insinuations contained in the memorials presented to the Senate and referred to the Committee on Privileges and Elections, it completely vindicates Senator Grover from the aspersions attempted to be cast upon him, and establishes beyond question the regularity and fairness of his election as a Senator.

The testimony shows that the two houses of the Oregon legislature voted separately for Senator on the day fixed by the act of Congress, and met in joint convention and voted

for Senator daily thereafter until Senator Grover received the votes of a majority of all the members of the legislature. In the vote taken in the two houses separately, and in every vote in the joint convention, he received a larger number of votes than any other candidate.

The testimony will further show that Senator Grover, in the final caucus of the Democratic members of the legislature, received the caucus nomination, and was thereafter the only recognized candidate of his party for the position, and as such received ultimately the vote of every democratic member of the legislature.

The testimony further shows that during the contest for Senator Governor Grover repeatedly assured his personal and political friends that he did not desire and would not have an election that was not honorable to himself and his party, and offered to withdraw from the contest if the Democratic members could agree upon any other candidate.

In the opinion of the undersigned, no member of the Senate is freer from suspicion of having procured his election to the body by improper means than Senator Grover, while none perhaps has been subjected to more unjust and slanderous accusations, or could have vindicated his character more completely against the assaults of personal and political foes.

The only witness who directly or indirectly sought to connect Senator Grover with bribery, or who in fact professed to know anything about the corruption of any member of the legislature, was a man by the name of Styles. This witness, who had made an affidavit to be sent to Washington to be used to prevent Governor Grover from taking his seat in the Senate, testified before the committee to a conversation between Governor Grover, Mr. Gilfry, and William H. Watkins in reference to the purchase of the vote of a member of the legislature by the name of Goodman, and also to a conversation which he had with Goodman, and also to seeing another member, by the name of Mosier, come out of the room of Governor Grover into the room of Mr. Gilfry with several hundred dollars in gold in his hands. In reference to the first statement he was contradicted by Goodman, Gilfry, and Watkins, and in reference to the second by Gilfry and Mosier. See testimony of Mr. Goodman, page 445, from which the following extract is taken:

"[The Senator here called the attention of the witness to certain passages in the testimony of Mr. Styles, as printed in a newspaper which he held in his hand.]

"Question. Did Governor Grover ever make any promise to you of any office whatever in case he was elected?—Answer. Never.

"Q. Did he approach you on the subject of voting for him?—A. I had a talk with Governor Grover, but he did not mention concerning my voting for him.

"Q. He said nothing in that conversation in the way of inducements; he held out no inducements for you to vote for him?—A. He did not offer me any inducement whatever; in the talk with him he asked me if I was not afraid that I was injuring the prospects of the Democratic party in this State by holding out as I did against the caucus, but he never during the conversation asked me to vote for him.

"Q. Did you state to this man Styles at any time that you could get a thousand dollars for your vote?—A. I never did. I consider that that gentleman has done me and Governor Grover a great injustice, and he stands before the people of Oregon to-day a perjured villain.

"Q. No person in your county, as I understand, believes any such allegation against you?

"Senator McMillan. Senator, that is taking a pretty wide range, it seems to me.

"Senator Saulsbury. No, sir; this gentleman is a man of character, and I take it that he has a right to say before this committee what he knows as to what his neighbors think of this thing.

"The Witness. No, sir; nobody believes it.

"Q. Are you regarded in your community as a corrupt man?—A. I think not; I hope not, at least.

"Q. Do you believe there are any Republicans in that county that would charge it upon you?—A. I don't believe there are.

"Q. Now I will ask you this question, Mr. Goodman: Did you ever, directly or indirectly, receive one dollar for your vote for Governor Grover for the Senate?—A. No, sir, never; not one dollar. No man ever approached me upon that subject, either of the Grover faction or the Nesmith faction.

"Q. Were you, directly or indirectly, influenced by any pecuniary consideration or reward, in any shape, manner, or form, or by promises of office or money, directly or indirectly, in connection with your vote for Governor Grover for the Senate?—A. There was no influence brought to bear upon me whatever."

See also the testimony of Mr. Watkins, page 589, &c.

See also testimony of J. H. Mosier, page 412, from which the following extract is taken:

"Question. Do you know a man by the name of W. H. N. Styles, who has testified

before the committee?—Answer. I never saw the man that I know of. That is him right over there, I believe [turning to the left and pointing to a row of by-standers]. No, I am mistaken; I beg your pardon; that is a better-looking man than he was. I will take it all back. He was sitting right over there [pointing] a few moments ago.

"Q. You say you never saw the man that you know of—never saw him till now?—A. I never saw him till yesterday. I never saw him in my life that I know of till I came here.

"Q. That man in his testimony swears as follows:

"'Q. Did you see Mosier at any time after the election?—A. I did.

"'Q. Where did you see him?—A. I was introduced to him in Mr. Gilfry's office.'

"Q. Now, I ask you, Mr. Mosier, if it is true that you were introduced to Mr. Styles in Mr. Gilfry's office, as he swears?—A. I never was; I never was introduced to any man by that name.

"Q. He says in his testimony as follows:

"'Q. When was that?—A. One or two days after the election I sat down there waiting for Mr. Gilfry to come in. As I sat there perhaps fifteen minutes, I guess, some gentleman came in. I supposed Mr. Gilfry was in the other room. I heard some one talking in there, but I did not go in. I sat down there. The gentleman came in who was in the other room, that is, in the governor's room. I may have sat there fifteen or twenty minutes and Mr. Mosier came in from the governor's room.'

"Q. I ask you now, Mr. Mosier, if that assertion in this testimony is true?—A. It is not, sir. I never was in the governor's private room in my life to my knowledge.

"Q. You say here upon your honor and upon your oath that that is not true?—A. I never was in Governor Grover's private room in my life.

"Q. The testimony of Mr. Styles goes on:

"'Q. Mr. Mosier came in from the governor's room?—A. Yes, sir.

"'Q. Through the door in the partition?—A. Yes, sir. He came into the room where I was and had money in his hand.'

"Q. I ask you, sir, if on any occasion you ever were in the governor's room?—A. I was not, to my recollection.

"Q. I ask you, sir, if you ever came out of the governor's room with money in your hand?—A. No, sir; and any man that makes that assertion or testifies to that statement is a liar.

"Senator McMillan. Mr. Mosier, the use of that kind of language does not add anything to the strength of your testimony.

"Senator Saulsbury (to the witness). Say it in your own language, sir. You have a perfect right to defend and vindicate your reputation here and elsewhere.

"The Witness. Yes, sir; I have, and I will do it, too. I have a right to say what I know about this thing, and I say it is false.

"[The answer of the witness was greeted by applause from a portion of the by-standers.]

"The Chairman. I said a while ago that if these unseemly demonstrations were repeated I should feel it to be necessary to clear this room. Any demonstrations of applause, or otherwise, calculated either to encourage and embolden or to discourage and intimidate a witness are evidently improper. I shall let it pass this time; but if after this second warning this thing is repeated I shall have the room cleared. I do not want to give anybody any offense, or to put anybody out if I can help it, but such demonstrations as this are highly improper, as every man who indulges in it must know, and cannot be tolerated here.

"The Witness. These things do not encourage me any; I shall state the facts all the same, whether they stamp their feet or not."

See also testimony of H. H. Gilfry, from which the following extract is taken:

"Senator Saulsbury. I ask you, sir, if you ever saw Mr. Mosier in Governor Grover's private office?—Answer. No, sir; I did not. I do not think he was in there at all during the session of the legislature.

"Q. Was he ever in the governor's private office with you?—A. Mr. Mosier? No, sir; he never was.

"Q. Did you ever see any money paid to Mr. Mosier?—A. I never did; no, sir.

"Q. Or to any other member of the legislature?—A. I never did; not a cent, sir.

"Q. On the occasion here referred to, or at any other time?—A. No, sir; never.

"Q. Did you ever see Mr. Mosier with any money in his hand in your room?—A. No, sir.

"Q. Or anywhere else?—A. No, sir.

"Q. Did you ever come from the governor's room into your own office and find Mr. Styles in your own office?—A. No, sir; I never did.

"Q. Do you pronounce that statement, then, so far as it relates to you, an unmitigated falsehood?—A. I do, emphatically. It is an unmitigated falsehood, without any foundation whatever."—(Testimony, page 578.)

In relation to other matters testified to by Styles, intended to affect the character of Senator Palmer, of the State legislature, he is not only contradicted most positively by Senator Palmer, but his testimony is proven to be false by the overwhelming testimony of from four to seven witnesses, on every important point.

Styles is also impeached by more than twenty witnesses, who swear that his character for truth was bad, and that they would not believe him on oath.

Nothing but the importance which was attached to the statements of this man Styles by those who originated and prosecuted the charges against Senator Grover could have justified so extended a notice of his testimony; but it would be improper to dismiss the statements of this witness without saying that for his perjury in this investigation he was indicted in the United States district court in Oregon and tried before a jury largely composed of Republicans, eleven of whom were in favor of conviction to one opposed; and on a second trial he again escaped because of a divided jury. At this last trial the most important witness to prove the guilt of the accused was necessarily absent, attending to his public duties in Washington.

It will be observed from an examination of the testimony that the theory of those who sought to impeach the regularity of the election of Senator Grover was that the money used in the alleged bribery of members of the legislature was furnished by the Hon. Joseph S. Smith, formerly a member of Congress, and Hon. B. Goldsmith, formerly mayor of the city of Portland. Mr. Smith came before the subcommittee and swore that he never, directly or indirectly, furnished any money to influence the vote of any member of the legislature on the Senatorial or any other question; that he was in Salem but once, and only for a short time, during the Senatorial contest, and then only to prevent the use of his own name for the position, which he had been informed might be done; and that he did not while there speak to any member of the general assembly on the subject of electing a Senator.

Mr. Goldsmith was, during the investigation, in the city of New York with one of his children, whom he had taken there for the purpose of having a difficult operation performed, and was consequently not before the committee, but telegraphed to the chairman his willingness to appear at any time and place convenient to the committee, and testify touching his alleged complicity with the corruption of members of the legislature, and subsequently sent an affidavit denying emphatically having furnished one dollar for the purpose of affecting the action of any member of the legislature upon the Senatorial question. Independently of the statements of Mr. Goldsmith himself, it was abundantly proved that he took but very little part in the contest, and was present in Salem only to procure legislation affecting his own interest, and for that reason was careful not to become mixed up in the Senatorial question, which might prejudice his own business before the legislature. Besides, it was conclusively shown that Mr. Goldsmith's financial condition was at the time such that he could not, if he had desired, advance money for so improper a purpose.

The only members of the legislature who voted for Senator Grover against whom the least whisper of suspicion was heard in the undefined rumors circulated by party malignity or inspired by the chagrin of disappointed hope were Mr. Goodman, of Umatilla County; Mr. Straight, of Clackamas County; Messrs. Mosier and Butler, of Wasco County; Senator Palmer, of Benton and Polk Counties; and R. W. Wilson, deceased, a representative from Clatsop and Tillamook Counties.

Whatever suspicions were indulged at any time in reference to Goodman, Straight, Butler, and Palmer, except so far as Mr. Goodman was charged by Styles, had their only foundation in the fact that they were known to be in favor of another gentleman for Senator, and some of them did not recognize the binding obligation of a caucus nomination, and therefore did not take part in the caucus, and voted in the separate houses and in joint convention several times for their first choice for Senator, and until they became satisfied that he could not be elected, when they cast their votes for Senator Grover.

All of those gentlemen are men of character and standing in their respective counties, and testified before the subcommittee denying most positively that they had been influenced in voting for Governor Grover by any corrupt or other improper consideration, and explained fully their entire course upon the Senatorial question. Neither of them had aught against Senator Grover, who, they declared, was from the first their second choice. Their testimony is full upon this point, and the undersigned refers to it with full confidence that it will satisfy every one who will take the trouble to read it of the candor and honesty of the witnesses, not only in testifying before the subcommittee, but in their entire action upon the Senatorial question.

With reference to Mr. Mosier, his indiscreet conversation while intoxicated gave rise to suspicions that he desired to procure money for his vote for Senator, and the man Styles was doubtless instigated thereby to charge him with having received money from Governor Grover, as already stated. The testimony of Mr. Mosier in reply to the statements of Styles has already been given. In his testimony he further stated that his only object in the conversations cited against him was to ascertain the truth of rumors to the

effect that money was being used to defeat the election of Senator Grover, and that he neither received nor desired to receive one cent for his vote on the Senatorial question. The testimony shows that he voted in caucus and on every vote but one in the separate houses and in joint convention of the two houses for Senator Grover, and that he withdrew his support from Grover on one vote because he was informed that the Senator was opposed to certain local improvements in which the people of his county were interested, and upon being assured that he had been misinformed upon that point he again voted steadily for Governor Grover, who was his first choice. He was shown to be a reputable and honest man by persons who had known him for a long time, and to be in good circumstances and under no necessity to obtain money in any improper way. The undersigned does not believe that Mr. Mosier was either given or promised pecuniary or other reward for his support of Senator Grover, and that whatever suspicions were entertained against his integrity were traceable to his own indiscreet conduct while in a state of inebriety.

The only other member whose character was assailed by suspicions detailed before the subcommittee was R. W. Wilson, deceased. Mr. Wilson, being dead, could not personally vindicate his character before the subcommittee; but every ground alleged for the suspicions entertained by any one against him was fully met and shown to be without foundation.

He was shown by the testimony of Governor Chadwick and other gentlemen who knew him well to be a man of sterling integrity and character, and in the opinion of the undersigned, based upon the testimony before the subcommittee, not the slightest justification existed for the attempted defamation of his fair name while living or his memory now that he is no more. He had always been a Democrat of the strictest sect, adhering to the usages of the party and supporting its candidates, whether made in convention or in caucus, and but followed out the rule of his life and the will of his constituents in supporting Governor Grover after he was nominated in caucus, although his personal predilections were in favor of another.

An attempt was made by a Republican by the name of Brown, an employé about the custom-house in Portland, to induce him by an offer of $1,500 to vote against Grover. Mr. Wilson communicated this insult to friends and took legal advice with a view of prosecuting Brown criminally for his offense. Brown testified before the committee to his own infamy and guilt, but failed to inculpate Wilson in his crime or cast a stain upon his untarnished memory. In the opinion of the undersigned no more unjustifiable attempt or more signal failure was ever made to blast the reputation of a worthy man.

A careful examination of the testimony taken before the subcommittee it is confidently believed will satisfy any unbiased mind that the story of bribery and corruption in the election of Senator Grover was unwarranted by any fact or circumstance worthy of a moment's consideration. Even the most uncharitable political opponent will find in that testimony not only ample refutation of the slanderous rumors circulated to the prejudice of Senator Grover and the members of the legislature who supported him, but abundant proof that his election to the Senate was free from every taint and honorable alike to him and the legislature of Oregon.

It will be observed that the memorials hereinbefore set out, referred to the Committee on Privileges and Elections, do not charge Senator Grover directly with procuring his election to the Senate by corrupt means, but simply state that "it is currently reported and generally believed" that such was the fact, and ask that he be denied a seat in the Senate until these charges are investigated. The undersigned cannot withhold the expression of his conviction that great injustice was done to Senator Grover by the consideration given in the Senate to these loose and undefined charges, if charges they can be called. They were made the basis of an objection to his right to a seat in the Senate, which was not withdrawn until it had been announced on the floor of the Senate that he would ask an investigation.

It is the first time in the history of the Senate when charges so vague and indefinite against a member-elect have received the least consideration, and it is to be hoped that it will not hereafter be regarded as a precedent to excuse injustice to others entitled to seats in this body. The testimony will show that these memorials were distributed from the custom-house in Portland (where they were proved to have been first seen) through the mails to Republican postmasters for the purpose of procuring signatures; and the man Brown, already referred to, employed in some subordinate position about that building, testified that he went into different counties with these petitions for that purpose. With the exception of this man Brown, no satisfactory proof could be obtained as to who were the guilty parties; but in the opinion of the undersigned, drawn from all the facts and circumstances proved in this investigation, the charges against Senator Grover contained in these memorials originated in a conspiracy to deprive him, by perjury and subornation of perjury, of a seat in the Senate to which he had been fairly elected by the legislature of Oregon.

ELI SAULSBURY.

[Forty-fifth Congress—Second and third sessions.]

STANLEY MATTHEWS,

Senator from Ohio from October 15, 1877, *till March* 3, 1879.

June 5, 1878, Mr. Matthews submitted a resolution that a select committee be appointed to consider hat connection, if any, he had had with any real or pretended frauds committed in the conduct nd returns of the election in the State of Louisiana in 1876, and with any promises of reward made y any one to one James E. Anderson in consideration of any official conduct by said Anderson in elation to said election, and to inquire into all the circumstances of any recommendation by himself of the said Anderson for appointment to office. The resolution was agreed to. March 1, 1879, he committee reported that they met on the 21st day of June, 1878, for the purpose of examining Mr. Anderson; that he refused to testify; that Congress having adjourned they could not compel him to testify; that the committee met again in December, 1878, and not agreeing to a motion that he Senate be requested to take proceedings to compel Mr. Anderson's attendance, reported to the enate a resolution that the House of Representatives be requested to transmit to the Senate a copy Mr. Anderson's testimony relating to Mr. Matthews before a House committee; that the testiony was transmitted and referred to this committee January 28, 1879; that Mr. Matthews was then amined. The committee found unanimously the statements of Mr. Matthews to be true; that had had no connection with any real or supposed frauds in the election in Louisiana, and that was not guilty of any corrupt conduct in any of the matters referred to in the testimony, while ey regarded his action in respect to Mr. Anderson's effort to obtain an appointment to office, sider the circumstances, as wrong and injurious to the public interest. No further action on the bject was taken by the Senate.

The history of the case here given consists of a transcript of the proceedings of the Senate relatg to it from Senate Journals 45th Cong., 2d and 3d sess., and the report of the committee from nate Reports, 45th Cong., 3d sess., vol. 2, No. 867.

There were no debates.

WEDNESDAY, *June* 5, 1878.

Mr. Matthews rose to a question of privilege, and having addressed the Senate upon e subject of certain statements made elsewhere, calculated to reflect upon his charac- and standing as a member of the Senate, submitted the following resolution; which s considered by unanimous consent. and agreed to:

"*Resolved*, That a select committee of seven Senators be appointed to inquire into and sider all things touching the matter stated and referred to by the Senator from Ohio r. Matthews] and the events connected therewith, and particularly what connection, ny, that Senator had with any real or pretended frauds or other wrongs committed in conduct and returns of the election in the State of Louisiana in 1876, and with any mises of protection or reward, if any, made by any one to one James E. Anderson, or ers, in consideration of, or connection with, any official conduct by said Anderson or ers, in relation to said election or the returns thereof; and into all the circumstances of recommendation by the said Senator of the said Anderson for appointment to office; that said committee have power to send for persons and papers, to employ a clerk and ographer, and have leave to sit during the recess."

rdered, That the committee be appointed by the President *pro tempore*.

Mr. Matthews's remarks are found on page 4119 of the Congressional Record, vol. vii, 4.]

SATURDAY, *June* 8, 1878.

he President *pro tempore* appointed Mr. Edmunds, Mr. Allison, Mr. Ingalls, Mr. Hoar, Davis of Illinois, Mr. Whyte, and Mr. Jones of Florida members of the select comee authorized by the resolution of the 5th instant to inquire into certain matters hing the late Presidential election in Louisiana.

WEDNESDAY, *June* 12, 1878.

a motion by Mr. Allison,

dered, That the select committee appointed to inquire into certain matters touchhe late Presidential election in Louisiana have leave to sit during the sessions of the te.

WEDNESDAY, *June* 19, 1878.

r. Allison submitted the following resolution; which was considered by unanimous ent, and agreed to:

Resolved, That the select committee appointed under the resolution of the 5th instant ake inquiry concerning the alleged connection of Senator Matthews with matters tive to the late Presidential election in Louisiana, in exercising the power heretofore ted to sit during the recess of Congress, may hold its sessions at such place or places shall deem most convenient for the purposes of the investigation."

[Third session of the Forty-fifth Congress.]

TUESDAY, *December* 10, 1878.

Mr. Allison, from the select committee to inquire into certain matters touching the late Presidential election in Louisiana, reported the following resolution which was considered by unanimous consent, and agreed to:

"*Resolved*, That the House of Representatives be respectfully requested to transmit to the Senate a copy of the testimony of one James E. Anderson relating to the Hon. Stanley Matthews, a member of the Senate from the State of Ohio, understood to have been taken before one of the committees of the House of Representatives."

MONDAY, *January* 27, 1879.

A message from the House of Representatives, by Mr. Adams, its Clerk:

"Mr. President, I am directed to communicate to the Senate, in compliance with its request of December 10, 1878, a copy of the testimony of James E. Anderson, given before the committee of the House of Representatives on investigation of alleged frauds in the electoral vote of the States of Louisiana and Florida."

TUESDAY, *January* 28, 1879.

The testimony* of James E. Anderson before a committee of the House of Representatives, yesterday received from the House of Representatives in response to a resolution of the Senate of December 10, 1878, was referred to the select committee to inquire into certain matters touching the late Presidential election in Louisiana, and ordered to be printed.

SATURDAY, *March* 1, 1879.

Mr. Allison, from the select committee who were directed by a resolution of June 5, 1878, to inquire into certain matters touching the late Presidential election in Louisiana, submitted a report (No. 867) thereon, with the recommendation that they be discharged from the further consideration of the subject.

REPORT OF COMMITTEE.

IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1879.—Ordered to be printed.

Mr. Allison, from the Select Committee to inquire into certain matters touching the late Presidential Election in Louisiana, submitted the following report:

The committee appointed in pursuance of the following resolution adopted by the Senate on the 5th June, 1878—

"*Resolved*, That a select committee of seven Senators be appointed to inquire into and consider all things touching the matter stated and referred to by the Senator from Ohio [Mr. Matthews], and the events connected therewith, and particularly what connection, if any, that Senator had with any real or pretended frauds or other wrongs committed in the conduct and returns of the election in the State of Louisiana in 1876, and with any promises of protection or reward, if any, made by any one to one James E. Anderson, or others, in consideration of or connection with any official conduct by said Anderson or others, in relation to said election or the returns thereof; and into all the circumstances of any recommendation by the said Senator of the said Anderson for appointment to office; and that said committee have power to send for persons and papers, to employ a clerk and stenographer, and have leave to sit during the recess"—

submit the following report of their proceedings:

The committee held its first meeting on the 11th June, 1878, and determined, on the 13th of June, to summon James E. Anderson, named in said resolution. Mr. Anderson appeared, but was not examined, for the reason that his presence was requested before a committee of the House, known as the Potter committee, as appears from the following letter addressed to the acting chairman:

HOUSE OF REPRESENTATIVES,
Washington, D. C., June 13, 1878.

Mr. Senator ALLISON,
Chairman, &c.:

Mrs. Jenks is about to be put on the stand, and we would prefer, if entirely agreeable to the Senate committee, that Mr. Anderson should be present during her examination. This is important to the House committee. At any other time take him.

W. R. MORRISON,
Acting Chairman.

* Found in Senate Miscellaneous, 42d Cong., 3d sess., vol. 1, No. 50.

committee again met on the 21st of June, when Anderson, the witness, again ap-
l and refused to testify; the circumstances of his refusal are fully set forth in the
d proceedings of the committee herewith reported. Congress having adjourned on
th day of June, 1878, the committee had no power to compel the witness, Ander-
testify. On motion of Mr. Whyte, the committee adjourned to meet again when
by the chairman of the committee, it being then understood that no meeting would
led during the recess of Congress, as the committee had no power to enforce its
in vacation. The committee again met on the 10th day of December, 1878. The
an stated that he had received a telegram from James E. Anderson, dated Eureka,
saying that he would now appear before the committee if summoned. On motion of
dmunds, it was

dered, That there be reported to the Senate the following:

esolved, That the House of Representatives be respectfully requested to transmit
Senate a copy of the testimony of one James E. Anderson relating to the Hon.
y Matthews, a member of the Senate from the State of Ohio, understood to have
aken before one of the committees of the House of Representatives.'

r. Edmunds submitted a motion that James E. Anderson be reported to the Senate
ontempt of its authority for refusing to testify before this committee, and that the
be requested to take the proper proceedings to secure his attendance.

e motion was not agreed to, there being three ayes: Messrs. Edmunds, Davis, and
. The noes were: Messrs. Allison (chairman), Hoar, and Ingalls. Mr. Jones,

motion of Mr. Whyte, the committee adjourned to meet at the call of the chair-

ing understood that the committee should await the action of the House on the reso-
calling for the testimony of Anderson taken by the House committee, which resolu-
s reported to the Senate on the 10th of December, 1878, and agreed to. On the 28th
January, 1879, the House of Representatives transmitted to the Senate the testi-
of James E. Anderson in pursuance of the request made by resolution of the Sen-
etofore referred to, passed on the 10th day of December, 1878. This testimony
the 28th day of January, 1879, referred to this committee and ordered to be
l. On the 7th February the committee met pursuant to the call of the chairman—
esent: the chairman (Mr. Allison), Mr. Edmunds, Mr. Hoar, Mr. Davis, and Mr.
"—

n the following proceedings were had:

motion of Mr. Edmunds, Senator Matthews was directed to be notified that the
ttee had received a copy of the testimony of James E. Anderson before a select
tee of the House of Representatives, and was ready to hear what he had to say on
ject.

e chairman having transmitted such notification, Hon. Stanley Matthews ap-
before the committee.

e CHAIRMAN. Senator Matthews, this committee now has the testimony of James
erson, which, I believe, I called your attention to some days ago and furnished you
of; and the committee are ready to hear anything you may wish to say in reference
testimony.

. MATTHEWS. I am ready to be sworn.

. EDMUNDS. I presume, also, the committee is ready to hear you in reference to
r you desire to have Mr. Anderson called for further examination by this com-

. MATTHEWS. In regard to the inquiry in respect to my wishes as to whether the
tee shall recall Mr. Anderson, I desire to say that it is a matter in which I have no
nd desire to express none, believing that I ought to leave the matter entirely to
cretion of the committee to do in that matter, and in respect to any other wit-
hat they ought to do under the duty imposed upon them by the resolution of the

. EDMUNDS. We understand you to mean by that, Mr. Matthews, that in your
nt, so far as your own vindication is concerned, you do not desire us to compel
attend.

. MATTHEWS. I do not make any request of that kind to the committee, and do
m it necessary that I should do so for my own vindication.

e CHAIRMAN. Then we will proceed with your examination.

n. STANLEY MATTHEWS sworn and examined.

e WITNESS. By a reading of the resolution, Mr. Chairman and gentlemen, it ap-
hat the committee were appointed to 'inquire into and consider all things touching
tters stated and referred to' by myself in the personal statement which I made to
ate on the 5th of June last, and reported in the Congressional Record, 'and par-

ticularly what connection, if any,' I had 'with any real or pretended frauds or other wrongs committed in the conduct and returns of the election in the State of Louisiana in 1876, and with any promises of protection or reward, if any, made by any one to one James E. Anderson or others, in consideration of or in connection with any official conduct by said Anderson or others in relation to said election or the returns thereof, and into all the circumstances of any recommendation by the said Senator of the said Anderson for appointment to office.'

"In order to enable the committee to rightly understand my relation to the whole subject, and also as a necessary preliminary to any statement I may have to make in reference to the testimony of Mr. Anderson himself, it will be necessary for me to make a statement in respect to the visit that I made to New Orleans in November, 1876.

"On the 11th day of November, 1876, which was Saturday, I received a telegram at Cincinnati from the President of the United States, General Grant, requesting me to proceed to New Orleans for the purpose of witnessing, with other gentlemen, the canvass and count of the votes in that State for the Presidential electors. I replied to that telegram to the effect that I would leave Cincinnati for New Orleans in obedience to that request that night. I learned during the course of the day that General Edward F. Noyes, now the United States minister at Paris, and the Hon. Job E. Stevenson, formerly a Representative in Congress from one of the districts in Cincinnati, were also going on the same train, and I met them that night on the car.

"On arriving at Louisville and leaving there, I ascertained that a number of gentlemen prominent in public life and members of the Democratic party were also on their way to New Orleans in connection with the same matter. Among others were Senator McDonald, ex-Senator Trumbull of Illinois, General Palmer of Illinois, a gentleman from Indiana, Mr. Julian, Judge Stallo of Cincinnati, and some other gentlemen, some from Chicago, whose names I do not now recall.

"We reached New Orleans on Monday at or near noon, and proceeded to the St. Charles Hotel, where General Noyes, Mr. Stevenson, and myself took rooms. No other gentlemen of the Republican party who subsequently participated in the proceedings there arrived until the lapse of two or three days.

"In the mean time a communication in writing had been addressed by the Democratic visitors to the Republican visitors, which had been put into my hands and held until the arrival of gentlemen who were expected to act with us, and was replied to after consultation, all of which was made a matter of publication at the time. In the mean time I had seen a great many persons in New Orleans, citizens of that place and of Louisiana, of both political parties, and had heard a great deal from them in reference to the general situation of the State in regard to the recent election, and obtained certain general impressions in respect to it, but did not acquire any knowledge of the details of the matter as it was expected that they might appear.

"In the latter part of the week, not ealier than Friday and possibly on Saturday morning, for the first time I saw any of the members of the returning board. On that occasion I met General Thomas C. Anderson and ex-Governor J. Madison Wells at the custom-house in company on my part with Mr. Sherman, the present Secretary of the Treasury, Mr. Stoughton of New York, and some other gentlemen whose names I do not recall. A general conversation ensued on the subject of the political situation in Louisiana and in reference to the general duties that were charged by law upon the returning board and its members, in which there was nothing said inconsistent with a strong expression of a general desire on the part of all the persons present that there should be a fair, open, and lawful canvass and count of the vote, and an expression on the part of those charged with that of a determination to do their duty fully in that respect without reference to the result, and no probable result was then discussed as likely to follow any course that might be adopted, no intimation that it was to come out in any specific way one way or the other.

"The fact was known and referred to that there were present in the city a considerable number of gentlemen representing both political parties, who had come there for the purpose of witnessing the proceedings of the board, and it was strongly urged by Mr. Sherman, Mr. Stoughton, and myself upon the two gentlemen who constituted members of that board that there should be an invitation from the board to representatives of these delegations to be present at their meetings and was acquiesced in immediately by General Anderson and Governor Wells, and I was requested to make a draught of a proper resolution containing such an invitation and request, which I immediately proceeded to do, and which, after some change of phraseology, was considered to be suitable, was delivered into the hands of one or the other of these gentlemen for the purpose of being offered in the board when it should hold its first meeting, and which afterward, upon an examination of their published proceedings, I found to be substantially the one which they did in fact adopt.

"In the mean time it became apparent to me that the proceedings which I had come

wn to witness would be prolonged beyond any expectation that I had entertained ien I accepted the invitation to attend, and having left my home and business upon a r hours' notice, had not made suitable preparation for any absence such as was necesily required for that purpose; and I accordingly made my apologies to the gentlemen th whom I was expected to be associated, and left New Orleans on Saturday evening, ing November 18, for Cincinnati, where I arrived on Monday morning, the 20th, with-t having been present at any meeting of the returning-board, without having ever seen r of the documents which were to be presented to them containing returns of the elecns or other accompanying papers, and without in any way having participated in any of ir proceedings beyond what I have already stated. So that in answer to the question to 'what connection' I had 'with any real or pretended frauds or other wrongs comted in the conduct and returns of the election in the State of Louisiana in 1876,' as ted in the resolution of investigation, it is apparent that there was no place for any h connection, for I was not present in the State or at the place where anything of the was possible and knew nothing in reference to the matter.

During that time, as I have already stated, I saw a great many persons of both poal parties, citizens of New Orleans, and of course at this time I am not able to say tively whom I saw and whom I did not see. I am quite sure, so far as I can be sure nything of the sort, that I did not see during my stay in New Orleans Mr. James E. lerson, for when I afterward saw him it was for the first time, as it appeared to me a his appearance. I did not recognize the fact at that time that I had ever seen him re. I had heard of one Anderson as being a supervisor of registration for the elec- in East Feliciana Parish, in connection with the fact stated in New Orleans at the that one of the questions that would arise before the board in reference to the reis of that election would be whether the protest ought to have accompanied the reis, or whether it was valid, although placed upon the returns subsequently, it being ed that the excuse for not putting it upon the return at the time was that it could be safely done by the officer for fear of his life.

I refer now to the fact that I do not believe I saw Mr. Anderson in New Orleans ng that time, for the reason that in a letter which he seems to have produced before committee of the House of Representatives, addressed to Weber, dated November 1876, and contained in page 15 of his printed testimony as printed for the use of the te, he uses my name as if at that time he had had some communication with me or e knowledge of me in reference to the matter as to which he testified, for in that r he says:

'I am not satisfied, and have no more faith in Sherman, Matthews & Co. than I in Pitt Kellogg.'

And in order to rebut the implication arising from his use of my name in that conion, I desire to say that at that time I had no knowledge of the man other than t I have just stated. I had never seen him; I had never had any communication him, and had never made any communication intended for him, and knew nothing ny communication that he had with anybody else.

Mr. WHYTE. He swears he never met you until he met you in Cincinnati.

The WITNESS. I believe that is the case. Now, the first time that I ever did see him, rding to my memory, assisted by a memorandum, was the 23d day of March, 1877. t that date not from my memory alone, for I would not be able to refer to the predate, but upon the envelope containing the paper known as the Nash agreement, the inal of which is now in the hands of the committee of the House. I made a pencil orandum of that day as being the day of its receipt, although I did not make it on lay when I received it. I did not make that memorandum until I received subseitly a letter from Anderson of April 7, 1877, from New Orleans, in which was inclosed other paper known as the Weber agreement.

Mr. DAVIS, of Illinois. He puts the date he gave you that as the 22d.

The WITNESS. I refer to that now because I do not wish to appear to contradict him cessarily and where I am not wholly sure that I am accurate.

The CHAIRMAN. You fix it at the 23d.

The WITNESS. The 23d is the memorandum in pencil on the back of this envelope, having made it not at the time but subsequently to the time when I received the r of April 7, I may have made an error in my then recollection of the day.

Mr. Anderson, in his testimony, on page 26, undertakes to give the substance of what d in our interview on that occasion, and I quote from it as follows. He says:

'I went into a general history of the election in Louisiana. I told him what part d taken, of the manner in which the election in East Feliciana had been conducted in the State; told him they had thrown out my parish on a forged protest; that they made me promises which they had not fulfilled and had no intention of fulfilling; ct, told him the whole story of the whole thing right through; went into all the ls, with the exception that I omitted any mention of Mr. Sherman's name.'

"That statement is entirely false. He did not go into the 'general history of the election in Louisiana.' He did not tell me 'what part' he 'had taken; of the manner in which the election in East Feliciana had been conducted and in the State.' He did not tell me 'they had thrown out' his 'parish on a forged protest.' He did not tell me 'that they had made promises which they had not fulfilled and had no intention of fulfilling.' He did not tell me what he calls 'the whole story of the whole thing right through,' or go into any of the details of the matters to which he refers. On the contrary, he introduced himself to me in my office, gave me his name, and said that he had been the supervisor of registration in East Feliciana Parish in the Presidential election; that he was a young man who had been in Louisiana for some years, had been active and zealous in the Republican cause during all the period, had labored in season and out of season, by day and by night; had assisted not only in New Orleans but throughout in different parts of the State in organizing the Republican party; that he had rendered what he believed to be valuable, efficient, but so far as he described them entirely honest and honorable services in the promotion of the cause of his party; that he had done this at great sacrifice of time, of money, of health, and at times at great peril of his life from his political opponents; that it was a dangerous service, and so far as he was concerned had been an unrequited service; that, to be sure, he had at that time a subordinate position as a clerk in the custom-house at New Orleans, the amount of the salary of which he did not mention, but he spoke of it as being insufficient to meet the necessities of his family; that he had in addition now to his other misfortunes to have incurred the enmity and hostility of the leaders of the Republican party organization in New Orleans, mentioning the names particularly of Kellogg and Packard with others, and that altogether his life in New Orleans had become intolerable, although if he could get a better and improved condition of things there in respect to salary he would be willing to remain, but that he thought under the circumstances he was entitled to something better elsewhere.

"He narrated this at considerable length and with great apparent earnestness and emotion, exhibiting great feeling and with the appearance of tears, so much so that I was, soon after his conversation commenced, very much enlisted in his interest, possibly the more so because he was appealing to me as against the men whom he said he had benefited there and to whom he naturally would have the right to look, the managers of his own political organization, and suggesting that the cause of their hostility to him was on account also of their hostility to the Republican national administration, to the President and his policy. I said to him that I sympathized with him, that I felt sorry for him, that I would be glad to serve him in any way that was proper, and if I could do so that I would endeavor to obtain for him some suitable employment in the Government, first a better place in New Orleans if it could be had, and, if not, then some other place, he suggesting that he would like to have some position abroad as consul on account of the health of his wife.

"In this matter I gave him no pledge; I brought neither myself nor any one else under any obligation further than the general expression of my good-will, my desire to serve him, and my intention to try to do so, and there was not in the whole course of the conversation the remotest hint that he had been engaged in any unlawful or dishonorable service in behalf of the party, and that he expected me to help reward him for it, nor did he claim that anybody else had made any promises to him in that respect which he had a right to have fulfilled or which he had a right to call upon me to help him in the fulfillment of. It was, so far as the conversation had proceeded up to that time, the ordinary case of an application on behalf of a person who was in great need of employment and who thought he was entitled to it as a matter of recognition for his general service in behalf of his party.

"He appeared to be very gratefully affected by the interest which I seemed to manifest in him, and was profuse in his expressions of pleasure and gratitude that I had received him so differently from the treatment that he had received from those to whom he had a better right, as he thought, to look, and he had gotten up to leave with the satisfaction which he had derived from what I had said to him, when he put his hand in his pocket and took out a paper and said there was a paper which he thought under the circumstances I ought to have, and gave me the original paper which is called the Nash agreement. What is found on page 24 of the testimony is, so far as I remember, a correct copy of it.

"By Mr. EDMUNDS:

"Q. What do you mean by 'original paper'; do you mean genuine paper?—A. I mean merely the original of which this print is a copy, which I furnished.

"By Mr. DAVIS:

"Q. That paper is now in the hands of the Potter committee?—A. Yes, sir. I delivered that paper, together with the other documents called the Weber agreement, into

the hands of General Cox, to be produced before the committee of the House on the examination of Mr. Anderson, together with some original letters which I had from Mr. Anderson, all of which he has produced and which are referred to in the printed testimony.

"By Mr. EDMUNDS:

"Q. In that connection, if I do not interfere with your statement, I should like to ask whether you delivered to General Cox, a member of the House committee, the identical papers that came to you from Anderson?—A. Yes, sir; and I intended to state in reference to that, because Mr. Anderson in his testimony denounces the Weber agreement produced by General Cox as a counterfeit, that it is the precise and identical and only paper of the kind delivered to me by him and conveyed through the mail from New Orleans in a letter dated April 7, 1877. The Nash paper I read when he handed it to me. I read it casually and hastily, but with sufficient attention to observe its character, and I asked what it meant. He thereupon stated to me that it was not what it appeared to be; that he had no design in it to obtain the position of naval officer at New Orleans; that it was perfectly understood that that was so; that he had no idea that Mr. Nash could do it, or that it could be done even if Mr. Nash was willing to do it, and that he had no evidence to suppress showing that the parish of East Feliciana was fairly carried by the Democratic party at the election held in November, 1876, thereby electing the entire State ticket and Congressmen, and that there was no object on his part or design on his part or on Nash's part to suppress any evidence. And on my asking him what it was meant for then, he said it was executed simply for the purpose that he might have a hold on Mr. Nash. There may have been something said in that connection about other and similar papers. If there was, the papers were not described, and I have no recollection of what was said; nor, indeed, have I any recollection that anything was said as to the existence of any other similar paper. My belief is that there was nothing said, because and that is the reason of my belief) when I received the subsequent letter, dated April containing the Weber agreement, it was a surprise to me as a thing that I had not expected to get.

"Q. Is that in print?—A. The letter itself is in the printed testimony at page 100.

"Q. That is the letter to which you refer?—A. Yes, sir. In the interval before the receipt of that letter I had written the letters contained on page 27 or on different pages of the same leaf.

"Q. Have you now stated all that took place between you and Anderson on the 22d or 23d of March?—A. Yes, sir, further than to say to him at that time that I would give him a letter of introduction to General Harlan when I ascertained that he had arrived in New Orleans, which I did subsequently on the 29th of March, as appears by the letter on page 27.

"I had received a letter after Anderson's leaving me at Cincinnati and going to New Orleans, in which he had inquired what he should say to Nash as to where the Nash agreement was, and in my note to him giving him a note of introduction I told him to say to Nash, if inquired of, that I had the agreement, and I desired Nash should know it.

"By the CHAIRMAN:

"Q. You are now speaking of the letter dated March 27, which is found on page 104 of the printed document?—A. Yes, sir. In that he asks me in reference to Nash: 'Shall I inform him that it is in your possession?' I replied to him on the 29th: 'You should say to Nash, if inquired of, that I have the agreement.'

"The next important step in the matter was the receipt by me of the letter now referred to of April 7, 1877, in which he informed me of what he claimed to be a combination on the part of Packard and others to accomplish some purpose in respect of the title to the President, outlining their hostility to him, stating that they were trying to induce him to go with them, all of which appears by the letter itself. He refers in that letter to what he calls 'the Pitkin *et al.* agreement,' as to which I know nothing more than is contained in that statement, and had never heard of it before.

"By Mr. EDMUNDS:

"Q. Have you ever heard it since until now?—A. Nor since. The Weber agreement is the one of which I have already spoken that he refers to, and which he speaks of as the last piece of documentary evidence in existence.' And then adds: 'I will now have to trust entirely to you, as the ill-feeling borne me by the Republican leaders has been intensified by my refusal to aid them in their infamous scheme.' The paper referred to is the Weber agreement is the one contained on page 12 of the printed testimony.

"When I received that paper and read it I made the memorandum in pencil to which I referred on the back of the envelope which had been delivered to me in our conversation, which contained the Nash agreement. At the time I received this paper, and from that time until after Mr. Anderson commenced his testimony before the House committee,

I supposed it to be a genuine document so far as the signatures were concerned, and that, it point of fact, it had been signed and acknowledged and sworn to both by Anderson and Weber, and I had no suspicion to the contrary until——

"By the CHAIRMAN:

"Q. You supposed, when you received it, that it was a genuine document?—A. That it was a genuine document; that is, that the signatures of Weber and Anderson were both in their own handwriting and placed there by themselves.

"By Mr. EDMUNDS:

"Q. Do you know in that connection at what time Weber died and of what disease?—A. I do not. I only know by report.

"Q. Of course, that is what I meant.—A. He was killed, as it was reported, subsequently to this.

"Q. Subsequently to the date of your receipt of the paper?—A. After that; I do not know precisely when.

"By Mr. WHYTE:

"Q. Subsequent to the date of the paper?—A. Yes; whether he was dead when I received the paper or not I do not remember. I do not know what date I have heard ascribed as the date of his death.

"After Anderson had commenced his testimony before the House committee, and my attention was attracted by it, and it was published in the newspapers, my suspicions were excited in regard to this paper and its signatures, and I compared them with other signatures said to be genuine ones of Weber, and it was apparent to any one from that inspection that the handwritings were not written by the same person, and I think a suggestion of that kind leaked out in the newspapers at the time; and it was after that that the paper, having been obtained from me by General Cox, was produced before the committee of the House and exhibited to Mr. Anderson, when he denied that it was the same paper which he had delivered to me. I now repeat and reiterate that if that paper which General Cox produced before the House committee as obtained from me was not the same paper which Mr. Anderson sent to me by mail, then I never received any paper from him of that kind, because the paper was the identical paper and the only paper which I did receive from him, without alteration in any respect.

"By the CHAIRMAN:

"Q. Under cover of the 7th of April?—A. Under cover of the 7th of April, and accompanied by the letter on page 100 of this testimony. It is important to me, that my own conduct should be rightly estimated by the committee and the Senate, that I should state what my impressions were in regard to the character and objects of the two papers.

"The impressions produced upon my mind by the consideration of these papers, and the inferences that I drew from them, as near as I can analyze what the state of my mind was at the time and during the whole progress of the matter, were about these: In the first place, I supposed from the nature of the papers, as well as from the explanation which Mr. Anderson had attempted of the Nash agreement, that the object of their execution and preservation up to that time when they were delivered into my hands was, to use a common and strong phrase, for purposes of black-mail; that himself and Weber had expected to make use of them in some improper way, either with Republicans or Democrats, whichever he might find to be most available for such a purpose, if he could find any, as a lever with which to promote some personal schemes and benefits to themselves. I understood from the nature of the conversation between myself and Mr. Anderson in my office, the circumstances and manner of his delivery at that time of the Nash agreement, and his sending to me by the letter referred to, and from the contents of that letter itself, the Weber agreement, that his object in delivering those papers to me was to deprive himself of the opportunity of making use of them according to their original intention, and to convince me that the purpose for which they were originally executed had been finally abandoned. There were several expressions made use of at the time of the delivery of the Nash agreement which suggested that idea and were intended to convey to my mind the belief that the paper was delivered to me for any purpose that I might see fit to use it for, to be entirely at my disposal, and that the two papers when they both came into my hands were the only copies that there were, that they were originals, and that there were no copies. In other words, that he was surrendering to me all the instruments by which he had ever intended any mischief in order that no mischief might be done by them, that I might be entirely satisfied of it, and that he had done this because he had found that I was ready and willing to help him in his condition by obtaining for him recognition and employment.

"I believe that the papers were given to me in good faith for that purpose, in order that no mischief might be done, that they might not be employed for any evil purpose.

Added to this, I had the impression and belief at that time, not that the papers were evidence of any fraud or wrong committed in the election, as to which I did not believe that any did exist, but that their publication would be regarded by many as strong, if not conclusive, evidence of such, and could have no useful purpose, but, on the contrary, would only tend to promote what I regarded as a mischievous and unfounded public scandal. Therefore I considered it a matter of some importance to what I believed to be public interests that the papers should be in the custody of a person who would not employ them for any such purpose.

"With those impressions on my mind, if I have been able to make myself clearly understood by the committee, I continued to carry out the intention which I had expressed to Mr. Anderson in the interview which I had with him when I first saw him before I had any knowledge of the existence of either paper, and that was to help him to get a suitable public employment, and the letters which are contained in his testimony which passed between us were written in pursuance of that intention and for the purpose of accomplishing that result; and in respect to those letters, they are, so far as I know, all correct, with the exception of one where he has undertaken to furnish the original of a letter addressed to me, and where I have furnished the original as received by me, and they do not entirely correspond, although the difference is not perhaps substantial, but I will point it out. It is the letter of June 19, 1877, the correct and original of which furnished by me is contained on page 106, marked A L, but the copy of which produced by Mr. Anderson to the committee in his testimony is on page 34, and the committee, by comparing the two, will observe the differences.

"Q. The letter that you received from Anderson, dated June 19, 1877, is found on page 34?—A. Yes, sir.

"Q. And the letter which he describes as having sent you of that date is on page 34?—A. Yes, sir.

"By Mr. EDMUNDS:

"Q. And you mean to say you did not receive any two letters such as those?—A. I did not. My explanation in my own mind of the difference is that the letter which he produced on page 34 is the draught of a letter which he intended to send me, and in copying it he changed it so as to make the difference. The one he in fact sent is contained on page 106.

"Q. And that is the only one you received?—A. That is the only one of that date which I received. It would be impossible for me to follow up the whole course of the correspondence and all the matters in connection with it in any connected narrative now from recollection. The matter, however, went on as indicated by the correspondence until I received a letter or telegram from General T. C. H. Smith, who was then the appointment clerk in the Treasury Department. That letter is here.

"By Mr. WHYTE:

"Q. Is not that at the bottom of page 106?—A. I think not, but it may be, perhaps. I am not sure but I received either a letter or a telegram, and my answer, if this be the letter, is not here, but is contained in General Smith's testimony before the House committee. I remember the substance of my answer, which I think was by telegraph, and that was that neither I nor any other person was under any obligation to Mr. Anderson, and that if he was not willing to accept such a position as Mr. Smith was willing to offer and thought a suitable place for him, to drop him and the whole business.

"By the CHAIRMAN:

"Q. Have you a copy of that?—A. I can get it from the House committee, but probably I had better get General Smith's whole testimony.

"By Mr. EDMUNDS:

"Q. What are you now referring to? Is it your letter mentioned in General Smith's note of June 25, 1877, 'A M,' on page 106 at the bottom?—A. No; I think not. I think the one I refer to must have been in answer to this probably, but that will appear when it is produced.

"Subsequently to that I happened to meet Mr. Anderson near Washington. He refers himself to the interview. It was on the train going from here to Baltimore. I had not seen him while we were both remaining in the city.

"By Mr. HOAR:

"Q. When was that?—A. I do not remember the date, but it was subsequent to this correspondence with General Smith, and must have been nearly about that time. It must have been just prior to his writing this letter of June 19.

"Q. Where were you then?—A. I was just leaving Washington.

"Q. At the time of the letters of June 19th and 22d?—A. When I got that letter I

was in Cincinnati. Just prior to his writing that letter, and at the date of the letter, I was in Washington, and I was leaving here and was on the cars when I saw Mr. Anderson. He was on the same train, and told me he was going over to Baltimore to enter upon the duties of some position in the custom-house there that General Smith had given him, and he was very much gratified that he had received it, and was very profuse in his expressions of thankfulness to me for having procured it for him, and I supposed that he was satisfied until that letter came. Subsequent to that I understood that he had obtained employment on a newspaper, the North American, at Philadelphia, and that an arrangement had been made between himself and General Smith by which his brother was to have a place, and did have a place, perhaps the same place that he had vacated in the custom-house at Baltimore, and he expressed himself as very much satisfied with that and pleased with the arrangement, and the matter I considered as having entirely passed beyond any connection of mine with it.

"After that I saw him in Washington once or twice; I do not remember the occasions. He called at my house on more than one occasion, but it had no reference at that time to himself as to any position. He had, as he told me, no further desire for any office for himself; that he was well situated in the newspaper, and it was greatly better for him, and he did not want anything further, and was satisfied with what had been done so far as I was concerned. But he commenced talking then to me about the appointments to be made by the President in reference to New Orleans, the custom-house appointments, the appointment of marshal, but particularly the custom-house appointments; and I was called upon at or about the same time by Dr. Darrall, who had then just been unseated by the House of Representatives from the seat which he claimed from Louisiana, who also began to talk about the custom-house in New Orleans, and about being an applicant for it himself, and I was made aware that it was Mr. Anderson's desire that Dr. Darrall should be appointed, and that it was their joint desire that I should take some steps to secure Dr. Darrall's appointment.

"I said most distinctly at the time and at all times to these gentlemen, either separately or apart, wherever they happened to talk to me on the subject, that I neither could nor would take any part in the matter whatever; that it was a matter in which I had no right to interfere, and in which I had no desire to interfere; that I had been accused by the friends of Governor Packard of standing in the way as the only obstacle to his appointment as collector at New Orleans, and that so far from that I had expressly said that it was none of my business, and in order to satisfy the friends of Governor Packard, and at their desire, I had taken what seemed to me to be the unnecessary pains of going to the President to say that if he thought the public interest would be best served by the appointment of Governor Packard as collector of customs, I hoped that no personal consideration would interfere with the execution of his intentions in that respect, and certainly, so far as I was concerned, that I had no personal reasons for opposing his nomination or confirmation, and that consequently, being in that attitude and having at that time rather made up my mind that perhaps Governor Packard's nomination would be a good thing to do, I declined to have anything further to do with the matter, and in that state, that condition of things, I happened one day—I do not remember the hour of the day—to meet Mr. Anderson in one of the public places of this Capitol, between the Senate Chamber and the entrance in the hall, evidently in a state of intoxication, the first time I had ever seen him in such a condition, and with a very abrupt and insolent address to me, wanted to know what the Administration were going to do about the appointment of a collector of customs at New Orleans, and said he would give them just one week in which to make up their minds about the matter. I immediately, as soon as he had finished his notice, said to him that he was drunk and insulting, and that I should have no further communication with him, and forbade him to approach me or communicate with me in any way whatever. He afterwards called at my house, as I was informed by a servant, with his card, but I declined to see him, and have never seen him since, except publicly and in this room; and all statements made by him or by Dr. Darrall in reference to my having made any promises to use my influence or otherwise take any steps to influence the nomination of himself or anybody else as collector of customs at New Orleans are pure fabrications, without any foundation in truth; and so far as I now recall anything I have said, all that occurs to me as important in reference to this matter, with perhaps this exception, that I ought to say that on no occasion did Mr. Anderson ever, either expressly or by any implication, suggest that he had any promise from Mr. Sherman, or that he knew of any, offering him assistance in the way of public office or otherwise for anything that he did or omitted to do in reference to the election in Louisiana. I never heard of the so-called Sherman letter until it became matter of public notoriety through the newspaper press in connection with this matter; and so far as I am now advised, I submit the matter for further examination to the committee.

"By Mr. EDMUNDS:

"Q. In any of these interviews with Mr. Anderson, did he ever say or in any manner. ıtimate or hint that he had been a party to, or knew of, any misdoings in respect of iisrepresenting the true result of the election down there?—A. Never on any occasion ı any way whatever. On the contrary, all that was said or suggested necessarily carıed just the contrary meaning to my mind.

"Q. I understand you to mean, then, in the statement which you have made, that hatever interest you took in the affair, or whatever you did or said about Anderson's etting a place or anybody else getting a place, was not under any impression that you ere helping him on account of any contrivance or misdeed that he had done or knew f, but on account of his having made you believe that he had done the honest and reglar work that members of all political parties who are honest feel that they have a right) do?—A. That is what I mean, and that it was in his case a case of peculiar hardhip, on the ground of which he made the appeal to me especially, because the persons) whom he would naturally look otherwise, by reason of their hostility to the Adminıtration, as he claimed, had also become hostile to him.

"By the CHAIRMAN:

"Q. In handing you these papers purporting to be agreements, did he explain to you efinitely that there had been a purpose at one time, either in his mind or the mind of Ir. Nash or Mr. Weber, to use these papers improperly?—A. The substance of what e said to me in delivering to me the Nash agreement was this: After rising to his feet) leave, after the substance of the conversation as I have related it had closed and I ad expressed an intention to help him as far as I could, he put his hand in his pocket nd took out the envelope containing the Nash agreement and said: 'Here is a paper ıat I think you ought to have: I give it to you without any conditions, to do with as ou see proper.' I then opened the paper, read it through, observed its general charac-r, and asked him what it meant, and he then proceeded with a statement, which I have ready undertaken to give, that it did not mean what it appeared to mean; that there is no evidence to supress; that there was no fraud as to which there was any evidence; it he had no expectation of getting any such office, but that he had had the paper given order (as I remember) to have a hold on him. That was all the intimation of any illıl purpose. And the other paper came to me inclosed with the letter of April 7, which tained all the information I had in relation to it."

he hour of the meeting of the Senate having arrived, the committee adjourned to :t again on the 11th February. On that day—

The committee met pursuant to adjournment, all the members present.

Hon. STANLEY MATTHEWS's examination continued.

The WITNESS. Mr. Chairman and gentlemen, I think it important that I should ce more distinct and clear one matter. In my first interview with Mr. Anderson en he handed to me the Nash agreement, as I have already stated, he did not state it purpose that paper had been executed for, further than for the purpose as he stated obtaining some hold on Nash; and took pains to explain the contents of the paper as meaning what they would appear to mean; that in point of fact there was no evidence ıy fraud that he had possession of, and none that he had agreed to suppress, and no ectation of relying as significant upon any promise made in the paper in reference to : office spoken of; and my distinct understanding, from all the circumstances, from manner, from his conversation, and from the period of time during the conversation ıen this occurred, was that he delivered that paper to me in token of his surrender of e paper and of all the purposes for which the paper was originally intended to be used for which it might be used; and what emphasizes that impression and conviction on y mind is that there had been no previous conversation between us in respect to the per or any of the things to which the paper related, nothing to call it out, no expection on my part that I should obtain it, no hint from him that there was any such paper ıtil he produced it; and in doing so he said it was a paper which he thought I ought have, as I supposed in return for the good-will which I had expressed toward him, e interest which I had manifested in his case, stating at the time that he delivered it me to be treated in whatever way I chose.

"That impression was so strong that I supposed at the time that the object in deliving the paper to me, as he afterward also did with the subsequent paper called the 'eber agreement, was for the purpose that I might destroy them. I did not do so, mply because I anticipated a possibility that on the whole it would be better that I ıould not, so that in case of the happening of any future contingency that I did not ıen contemplate it would be essential to my own protection in the matter that I should : able to produce the very papers which I had received; but I received them, the first ıe at that time and the other one subsequently, as evidence, by the act of his deliverıg them to me, that he desired to be understood as having abandoned whatever design e may have originally entertained of using them in any way whatever.

"By Mr. EDMUNDS:

"Q. If I understood you the other day, you said in that connection that he accompanied that delivery with the statement that there was no such fact in existence to his knowledge as the paper appeared to import?—A. He did distinctly, and I understand him to reiterate that in the testimony which he gave before the House committee, and that impression was corroborated and strengthened by the contents of the letter of the 7th of April, in which he referred to the alleged machinations as against the President by Mr. Packard and his friends, in which they sought to use him, and from the expressions contained in that letter I inferred that the whole matter was false; that is, that there was no foundation in truth or in fact for the things intended to be brought out by the use of him or of any of the instruments of evidence which he was supposed to have, where he says particularly in reference to one part of their plans, 'of course they commit perjury, but that is a small matter here'; and that impression was not affected by the other expression made use of in the same letter, where he speaks of this Weber agreement as being 'the last piece of documentary evidence in existence.' I of course understood it had no probative force of its own, except supposing it to have been signed by the two parties as a confession that would be admissible as against them, but not containing any evidence in itself as against others of the facts that were recited in it.

"In the note which I gave him of introduction to General Harlan on the 29th of March, I stated that the note would be presented 'by Mr. J. E. Anderson, who may desire to communicate with you confidentially,' and in my note to him, which was on the same sheet, 'you can talk to him as fully as to me.' So far as I now remember what was in my own mind at that time, my object in those expressions was simply to have Mr. Anderson converse with General Harlan in respect to himself and his own case and his own desires and his relations to this whole matter just exactly as he had done to me, so that General Harlan, being on the ground, might better judge as to the propriety of undertaking to assist in forwarding any application to be made by him for any promotion, which was the first thing he spoke of as desirable, in the custom-house office at New Orleans. There was no other matter that I remember of which I expected him to speak confidentially about, except the matters which I have testified to here, and which I remember as a part of the conversation.

"There is one other matter which I desire to make a further explanation about. On the 1st of June it appears that he telegraphed me from Washington in a very peremptory style about arranging this affair 'or you can all face the music.'"

"By Mr. WHYTE:

"Q. That dispatch on page 105 is dated May 1, but I presume that is a mistake?—A. I am not able now to remember what is the correct date. I remember, however, the fact of there being a discrepancy between the two.

"Q. It must be June 1, from the letters?—A. I think so. On page 32 it is June. He apologized for that by a letter written the next day, which will probably fix the date of that. That letter is on page 106. He writes a letter on the 2d of June in which he apologizes for that dispatch, but subsequently to that, on the 19th of June, after he had experienced a disappointment in the character of the position that was given him in the Baltimore custom-house, he writes the letter of that date set out on page 106, in which he says he proposes 'to wait here,' that is, at Washington, 'until Saturday, and if his case was not settled by that day, to 'take such steps as the occasion might require.' It was subsequent to that, I believe, though I have it not here, that the correspondence between General Smith and myself took place, in which I stated to General Smith, the appointment clerk of the Treasury Department, that neither I nor any one else was under any obligation to Mr. Anderson, and if he did not see fit to accept such position as Mr. Smith thought was suitable to him, to drop him.

"What I desire more distinctly to have understood is the reasons that actuated me in continuing the correspondence with him and continuing to manifest my interest in him after this conduct on his part toward myself, which in respect to that dispatch was insulting. My first reason was my anxiety, considering his disappointment which he had expressed in reference to the treatment he had received from others, and his disappointment in not succeeding through me in getting what he thought he ought to have, to not give him any excuse in his own mind for believing that I had not acted in entire good faith in carrying out the original expressions of my desire communicated to him in my first conversation to do something for him. I had said that to him under the circumstances which I have stated. I excused his own conduct toward myself as perhaps natural to a man who had an intense desire to accomplish his object, who perhaps was very needy, as I supposed he was, and who might suppose that I, like others whom he had charged, was only giving him words of promise without seeking to do anything to make them good, and I was anxious and sensitive that he should have no excuse to charge me with any bad faith,

"My other reason was my desire that the papers which were in my custody under the circumstances which I have stated, meaning by 'the papers' the Nash agreement and the Anderson-Weber agreement, should not be made public. I confess that I thought it was best that they should not be. I saw no reason for making them public in reference to any public interest involved. I did not believe it would do any good. I could not imagine any good that they would subserve, with my opinion as to their character, and I did believe that they might be made the instruments of mischief and of harm by propagating and to some extent confirming in the popular mind a belief in what I believed to be a false and injurious scandal in reference to the whole matter to which they related, and the two considerations together induced me to tolerate with him up to the point which I have described the conduct which the correspondence manifests as displayed by him.

"I believe these are the matters to which alone I care now to make any additions.

"The committee-room was then cleared for deliberation, after which the doors were reopened, and on Mr. Matthews appearing, the following resolution, adopted by the committee during its deliberation, was read to him:

"'*Resolved*, That Mr. Matthews may and ought to be examined in the same manner and to the same extent as if Anderson had testified before this committee to the same matters stated in his testimony before the House committee.'

"By Mr. WHYTE:

"Q. Senator Matthews, in pursuance of the resolution which has been read to you, I should like to ask you whether at the meeting at New Orleans, which you attended in pursuance of the request of President Grant, anything was said about protests in regard to the election in East and West Feliciana?—A. Do you mean the interview that I referred to as having been held at the custom-house with General Anderson and Governor Wells?

"Q. That is the interview.—A. There was no conversation on that subject at that time nor at any time between myself and those two gentlemen, members of the returning board, or between them and others in my presence at any time.

"Q. I do not ask as between them and yourself, but between yourself and any other persons?—A. Nor between myself and any other persons.

"Q. Did you know anything about the failure to make protests by these supervisors in regard to the returns from their parishes at the time the returns were regularly made?

"Mr. EDMUNDS. I wish to suggest that that inquiry appears to imply that there was a failure to file protests, about which I know nothing and I believe the committee know nothing.

"The CHAIRMAN. Mr. Whyte will modify the question, I suppose.

"Mr. WHYTE. The word 'failure' probably I ought not to use. I supposed everybody remembered the fact that the protests were made in New Orleans, and not made in the parishes.

"Mr. EDMUNDS. I do not remember any such fact. I do not know anything about it.

"Mr. WHYTE. The protests are in this testimony and show that they were made in New Orleans. They were part of the document which Mr. Sherman presented to the Senate.

"Mr. EDMUNDS. I only make the suggestion because I know no such fact, know nothing about it. I only wanted to avoid the committee being committed to an implication which the question seemed to make. It may be a correct implication or it may not.

"Mr. WHYTE. I would only say that the protest to which I refer in regard to East Feliciana is dated at New Orleans, and sworn to before Judge Campbell on the 10th of November, 1876, and appears in Senate Miscellaneous Document No. 2, Forty-fourth Congress, second session, page 223.

"The WITNESS. It is also in this testimony of Anderson, on pages 5 and 6.

"Mr. WHYTE. It is.

"The CHAIRMAN. The House has sent to us the entire testimony of Anderson; in other words, has sent us testimony which we did not ask for, and of course it is all printed in this volume. It may not be material in this connection, but it may become so hereafter, and therefore I call attention to the fact.

"The WITNESS. May I go on now?

"The CHAIRMAN. Yes, sir.

"The question of Mr. Whyte was read to the witness, as follows:

"'Do you know anything about the failure to make protests by these supervisors in regard to the returns from their parishes at the time the returns were regularly made?'

A. During the few days I was in New Orleans, between the 13th and 19th of November, 1876, I did hear as a matter of conversation in reference to one or the other, if not both of the parishes of East and West Feliciana, that it was reported that the protests required by law to be made by the officer in charge of the election, called, I believe, the

supervisor of registration, was not made on the day of the election, nor at the place of the election, but was supplied subsequently, but at what time and place I do not remember to have heard; and I understood that the question would arise in reference to the validity of those protests as affecting the returns of the election at those places in regard to the jurisdiction of the returning board to go into the question of those facts, which, under the law, were thought to give them power to invalidate the election itself—such as intimidation, force, fear, riots, &c. I say I heard it as a matter of conversation, but from whom, and where, I cannot state positively, except, as heretofore stated, I did not hear anything said on that subject in the interview at which either of the members of the returning board was present.

"Mr. EDMUNDS. Mr. Chairman, I wish to submit for the consideration of the committee, as a matter of fairness towards every member of it, that the answer of this witness has no tendency to establish the fact of the protests not having been made regularly and according to the laws of Louisiana, and that it can only be received so far as it may affect his personal conduct in relation to the transaction. I do not ask the committee to decide the question now; but, in order that it should not be misunderstood hereafter, I make this suggestion.

"The CHAIRMAN. The suggestion will go in the record.

"Q. (By Mr. WHYTE.) Senator Matthews, Anderson has stated that he told you in conversation, in March, 1877, that his parish of East Feliciana had been 'thrown out on a forged protest.' Did he make any such statement to you as that?—A. He did not tell me anything of the kind.

"Q. Did he then tell you of any promises made to him by anybody in Louisiana in regard to any service that he had rendered in his capacity as a superviser of registration, and that those promises had not been kept?—A. He did not.

"Q. Did he say more to you than to appeal to your generosity to get him some position on account of his services to the Republican party, or did he explain to you that he had rendered peculiar services which ought to be rewarded?—A. His appeal to me was to my generosity and sense of justice to assist him in getting some employment in the Government, largely if not mainly on account of services which he claimed to have rendered to the Republican cause in Louisiana, the nature of which he related quite at length, giving me instances of his assisting in the organization of the party in different parts of the State, in looking to the interests of the party, and mentioned that these services were peculiar in the sense that they had been efficient, and that they had been dangerous, for he referred to the fact that they had been rendered at great sacrifice of time and of whatever means he had, with the exposure of his person not only to ill-health but to peril of life from his political adversaries; but there was not in the whole of this account the most distant allusion that was not, according to his description of it, entirely honorable and such as an honest man might render if he felt the degree of interest which he claimed to have done in his party and its principles and its cause.

"Q. Did he explain to you after that the nature of the Nash-Anderson agreement, which you say he delivered to you, in that conversation?—A. Yes, in the way which I have already stated.

"Q. Then did he tell you of the Weber-Anderson agreement in that same conversation?—A. My recollection is that he did not.

"Q. Did you tell him to go to New Orleans and wait for the commission known as the MacVeagh commission, which was contemplated at that time?—A. I understood him to say that he was on his way to New Orleans, or that he was going to New Orleans, and I stated to him that the first opportunity I should have to endeavor to do for him what he seemed to wish at that time would be when the commission arrived in New Orleans; that being personally acquainted with General Harlan, and as he desired an effort to be made to improve his condition in the custom-house, I would give him a letter of introduction to him when I heard of his arrival in New Orleans.

"Q. Did he speak of any penitence in regard to the exaction of such an agreement from Nash as is disclosed by this paper?—A. That I inferred from the apologies which he made in reference to it in having me understand that it never was intended to mean what it appeared to mean on its face.

"Q. Then how do you account for the language in his letter of March 27, to be found on page 104:

"'Nash will be here this week, and will demand possession of that agreement, after offering me a (possibly) clerkship. Of course I shall decline. Shall I inform him that it is in your possession?'

"What was the meaning of that?—A. I have no means of answering that. There was no statement made by Mr. Anderson to me of any understanding between him and Mr. Nash in respect to the possession of the agreement. The only explanations he made in regard to its nature were those which I have already given, and I cannot of course say what he meant by this. In reply to his question as to whether he should inform Nash

that it was in my possession, I answered him that I desired him to inform Mr. Nash of that fact in my letter of introduction of March 29, in which I say, 'You should say to Nash, if inquired of, that I have the agreement,' as I desired that Mr. Nash should know that fact.

"Q. Why did you wish Mr. Nash to know that?—A. In order that Mr. Nash might be relieved in his own mind from any such coercion as might be possibly implied from his knowledge of the existence of the paper and his ignorance of its whereabouts. In other words, to relieve him from that which Mr. Anderson described as the object of taking it—that is, Anderson's hold upon him.

"Q. What had Mr. Anderson to say to General Harlan confidentially, which is the language I think you use in your letter?—A. I say in my letter of March 29, introducing Mr. Anderson to General Harlan: 'This will be presented to you by Mr. J. E. Anderson, who may desire to communicate with you confidentially.' What I referred to was the same matters which he had related to me as the foundation for his own claims to my good-will, and particularly that portion which consisted in the description of the hostility which he said he had incurred from the leaders of the Republican organization in New Orleans, described as Packard, Kellogg, and others.

"Q. Mr. Darrall says in his letter that he had talked with you about the Sherman letter; but I think you said you knew nothing about the Sherman letter?—A. Nothing in the world.

"Q. In his letter of April 7 Anderson says: 'Inclosed find Weber agreement. This is the last piece of documentary evidence in existence.' I understood you to say that you knew nothing of that agreement prior to this letter?—A. I did not, nor of the Pitkin agreement spoken of in the preceding sentence.

"Q. On page 111 of the House testimony I find this indorsement apparently on an application of Anderson to be appointed under the State Department as consul:

"'For important reasons I specially request that this request be complied with.'

"That is the request that he may be appointed to a foreign consulate, and then below it:

"'Executive Mansion. Application for appointment United States consul at Callao, Peru. Senator Matthews requests that this appointment be made for important reasons.'

"What 'important reasons' were there that a man like Anderson should be appointed to a consulate?

"Mr. HOAR. On what page is that?

"Mr. WHYTE. I do not see it in the little volume which you have printed here; but it appears in the volume printed by the House.

"The CHAIRMAN. Then the House have not sent it to us.

"Mr. WHYTE. The House have sent all of Anderson's testimony, but have not sent you these letters and papers.

"The WITNESS (after examining the document). The only reasons I had for wishing it were those that I have already explained as operating on my mind in furthering his wishes in respect to an appointment.

"Q. (By Mr. WHYTE.) You subsequently recommended him, did you not, to the collector at New Orleans for an appointment as deputy collector?—A. I did.

"Q. And he did not succeed?—A. He did not.

"Q. On his way back from New Orleans to Washington he alleges that he stopped to see you at Cincinnati in May?—A. I remember Mr. Anderson being in my office subsequently to the first interview; but at what time, either in point of time as to the month or as to the day of the month, or at what period in the history of the whole matter, I do not now remember.

"Q. Anderson states that in that interview you remarked to him—

"'You go right back in the next train; I have just to-day had a letter from the President in regard to your case, and I have written him such a letter as will secure your appointment to some position.'

"Is there any truth in that statement?—A. There is not.

"Q. After he reached Washington he alleges he sent you the dispatch of June 1, containing these words:

"'The President claims to have received no letters. I want no more correspondence and no more nonsense. Come here and settle this affair, or you can all face the music. Care nothing about documents in your possession. Answer immediately.'

"Did you receive that dispatch?—A. The telegram as set out on page 105 differs from the telegram as set out on page 32 in this printed testimony, but not substantially. The words 'answer immediately' occur in the copy on page 105; the words 'telegraph me at once' on page 32. The copy contained on page 105 is the one I received, and is the one furnished by me to General Cox, who produced it before the House committee.

"Q. But the date I think is wrong?—A. The date must be wrong. It is dated 'May 1' there, but it ought to be 'June 1,' undoubtedly.

very much dissatisfied immediately with it, as he expressed himself in his le June 19, on page 106, where he describes what the duties of the office were, an threw it up, refused to keep it, but succeeded, as I understood, in obtaining fro eral Smith the appointment to the same place, as I always understood, of h brother.

"Q. I call your attention to the fact that in this letter of the 19th he says tha has been offered him and he has declined it?—A. I know he does say so, but he told I have already stated, when I met him on the train going from Washington to Bal that he was going over there to enter on the duties of it, and was then very much with the idea of having the employment. The next I heard was that I recei letter of June 19, in which he expressed his disgust at the position of inspector of c I inferred from that that he had actually entered on the duties of the place, ha what was required of him, and found that they were duties that he was not disp perform, and then wrote me that letter in which he says he declined it. My i tion subsequently was that this arrangement was made which I have just relate having obtained employment in the office of the North American he abandoned sire to have any appointment of his own, and obtained from the appointment cler eral Smith, the appointment of his brother to this place in the Baltimore custom which he himself was not willing to have or to keep, whichever it was.

"Q. The letter of General Smith seems to confirm the theory that he decline gether to consider the place?—A. I notice that it does. Nevertheless, I still say told me that morning on the train going to Baltimore that he was going over t the purpose of entering on the duties of that office, and I inferred from that sta that he had in fact done it. When I got that letter I presumed that he had pr on the experience of a day or two, found it was not what he thought it was, and ha it up. It may be, however, that he never did for a day occupy the office. I do no personally about it.

"Q. On the 11th of February, 1878, he alleges that he addressed you a letter from delphia. Without going into the whole letter—it is on page 107 of the printe mony—there occurs in it this paragraph:

"'In May last I warned you of just such a state of affairs as has come to pass. you adopted my suggestions then (in two respects), it could have been avoided. I too late yet, if prompt measures are taken.

"'Am no applicant for nor would I accept any position under the administrati only desire to avoid the scandal that is in prospective.'

"What did he mean could have been avoided, do you know, in that letter?—A not. My answer to that letter is contained in a letter printed on page 38 of this ment, though there is still some mistake about the date. It must be 'Februa although printed 'February 2,' if his letter be correctly dated February 11, for I

"'I have your note of yesterday, and in reply beg to say that I do not recoll suggestions heretofore made by you, to which you refer, and which you think if a might still prove advantageous to the public interest, and I would be glad to ha

"The CHAIRMAN. 'Repeat' is probably the word intended there, but you say you have no recollection of it?—A. Yes, sir.

"The CHAIRMAN. The date is explained in the next sentence, because it says the letter is postmarked 'Washington, February 12, Congress'?—A. Yes, sir; the date must be February 12.

"Q. (By Mr. WHYTE.) You wrote to Secretary Evarts on the 14th of May, as these papers seem to show, from Cincinnati a letter recommending Anderson for a consulship. The letter is on page 30 of the printed testimony furnished to the committee, Exhibit O. This letter was written after you had received the Nash agreement and the Weber agreement?—A. Yes, sir.

"Q. In this letter you say you had had a private conversation with the Secretary, and repeat that Mr. Anderson has 'been compelled to act a very difficult part,' and has 'very strong claims upon the administration in the public interests.' Did you think that that was a proper man to represent this Government abroad whom you knew to have exacted these two papers for the purpose of black-mailing the parties?—A. In the abstract I should think no. Under the circumstances I thought it was better to have even such a man put into a position such as might be found for him than to have had the scandal of a publication of these papers. That was my opinion at that time.

"The other members of the committee having declined to ask any further questions,

"The CHAIRMAN. Do you wish to make any further explanation or statement?

"Mr. MATTHEWS. No, sir.

"The committee then deliberated upon the question whether further testimony should be taken or other witnesses called, and no member of the committee proposing to summon any witness, the chairman was requested to make the following statement to Mr. Matthews:

"'Mr. Matthews, the committee have decided that they do not desire to call any witnesses at present. Do you wish to submit any further testimony, or do you desire the committee to summon any witnesses?'

"Mr. MATTHEWS. I do not."

Thereupon it was unanimously agreed that no further testimony should be taken, all which will more fully appear from the printed minutes and proceedings of the committee herewith reported.

The committe confine themselves to the foregoing narrative of the facts, and, after full consideration, they find unanimously the statements of Mr. Matthews to be true, and that he had no connection with any real or supposed frauds in the election in Louisiana, and that he has not been guilty of any corrupt conduct in any of the matters referred to in the testimony, while we cannot but regard his action in respect to James E. Anderson's effort to obtain an appointment to office, under the circumstances, as wrong and injurious to the public interest.

Proceedings of and before the select committee of the Senate appointed under the resolution of June 5, 1878.

TUESDAY, *June* 11, 1878.

The committee appointed in pursuance of the following resolution adopted by the Senate on the 5th instant, met:

"*Resolved*, That a select committee of seven Senators be appointed to inquire into and consider all things touching the matter stated and referred to by the Senator from Ohio [Mr. Matthews], and the events connected therewith, and particularly what connection, if any, that Senator had with any real or pretended frauds or other wrongs committed in the conduct and returns of the election in the State of Louisiana in 1876, and with any promises of protection or reward, if any, made by any one to one James E. Anderson, or others, in consideration of, or connection with, any official conduct by said Anderson or others in relation to said election or the returns thereof; and into all the circumstances of any recommendation by the said Senator of the said Anderson for appointment to office; and that said committee have power to send for persons and papers, to employ a clerk and stenographer, and have leave to sit during the recess."

Present: Messrs. Allison, Ingalls, Hoar, Davis of Illinois, Whyte, and Jones of Florida.

After consultation it was determined to summon James E. Anderson as a witness for Thursday next.

On motion, the committee adjourned to meet on Thursday next at noon.

THURSDAY, *June* 13, 1878.

The committee met at 12 o'clock m., pursuant to adjournment.

Present: Messrs. Allison, Hoar, Davis, Whyte, and Jones.

James E. Anderson, who had been summoned to attend as a witness, also appeared.

The ACTING CHAIRMAN (Mr. Allison). The witness, Mr. Anderson, is here; but I

I submit that to the committee.

Mr. HOAR. Mr. Chairman, I move that Mr. Anderson be excused until th committee shall consider him at liberty to attend here.

Mr. DAVIS. I move that the chairman request Mr. Morrison to notify us whe be ready to excuse Mr. Anderson from attendance on the House committee.

The WITNESS. I suggest that that would depend in a great measure on the l time it will take Mrs. Jenks to testify. I will state to the committee that as Mrs. Jenks is examined I shall be ready to appear here at any hour.

The ACTING CHAIRMAN. Is there objection? [A pause.] It is the sense of mittee, as I understand, that Mr. Anderson is excused, and he will report to Mr. Morrison is through with him.

Mr. HOAR. I suggest, Mr. Chairman, that we deem ourselves as still in sessi notified by the chairman when the witness is ready to be examined.

The ACTING CHAIRMAN. That is the understanding.

FRIDAY, *June* 21,

The committee met pursuant to call.

Present: Messrs. Allison (acting chairman), Hoar, Ingalls, Davis, Whyte, an Hon. Stanley Matthews was present by invitation.

James E. Anderson, who had been summoned as a witness, appeared.

The ACTING CHAIRMAN. Will you be sworn?

Mr. ANDERSON. I will state to the committee before I take the oath that I be represented here by counsel.

The ACTING CHAIRMAN. You desire to be represented by counsel?

Mr. ANDERSON. I desire to be represented by counsel.

The ACTING CHAIRMAN. A witness!

Mr. ANDERSON. A witness. I desire to be represented by counsel.

Mr. HOAR. Mr. Chairman, I suppose he does not desire to have counsel prese we determine the question whether he shall be sworn.

Mr. ANDERSON. I should like to have the question settled before I am sw whether I can have counsel or not.

Mr. DAVIS. That is a matter we can dispose of hereafter. [To the acting ch You can swear him and tell him we can discuss this matter afterward. We canno of this question now, probably.

The ACTING CHAIRMAN. Have you arranged for your counsel, if you have co

Mr. ANDERSON. I will by to-morrow.

Mr. INGALLS. Mr. Chairman, I hope there will be no delay about swearing ness.

Mr. DAVIS. Oh, no, sir.

Mr. INGALLS. This is a question for the committee to discuss.

The ACTING CHAIRMAN. You will be sworn, Mr. Anderson.

Mr. HOAR. I move that the room be cleared.

The ACTING CHAIRMAN. Do I understand you to decline to answer questions?

The WITNESS. I do, emphatically.

The ACTING CHAIRMAN. The committee have decided that you ought to answer such questions as they desire to put to you. We are charged with an examination. All we want is the facts. I will be glad to have you state now to the committee your age, occupation, and business.

The WITNESS. I will state to the committee that I have no desire to throw any obstacle in their way, and it is my object and intention to aid them in everything in this investigation, but I see no reason, no good reason, why I should not be allowed counsel in this matter. I am here absolutely friendless. I believe Mr. Matthews is here to represent himself, and I think somebody should be here to represent me; and unless I am allowed counsel, as I said, I have no questions to answer and shall absolutely decline to answer anything that may be asked of me.

The ACTING CHAIRMAN. The committee have understood——

The WITNESS. That is all I have to say in regard to the matter.

By Mr. INGALLS:

Q. Are you acting in this matter under the advice of counsel?—A. I am not. I am acting under my own advice. I have asked nobody's counsel. I have no counsel here at all.

By Mr. DAVIS:

Q. You are a witness. You are not prosecuted.—A. I understand that. I understand the question, sir.

Q. No court in the world ever allowed a witness counsel.—A. I believe the object of the committee is to get at the truth of this matter. If they are simply desirous of getting at the truth of it, I see no good reason why they should object to my having counsel present, at least somebody who will represent me in the matter.

The ACTING CHAIRMAN. Every gentleman of this committee is a member of the legal profession. We are charged with a duty simply of investigation, and we intend to discharge that duty impartially.

Mr. DAVIS. And protect witnesses.

The ACTING CHAIRMAN. And protect witnesses and everybody.

The WITNESS. Therefore I see no good reason why you should object to my having counsel present. I am perfectly willing, if Mr. Matthews is not present himself to direct this examination, to answer all questions; but if he is present and has the privilege of directing my examination, I claim that I have the same privilege of having a gentleman here who will look after my interests in the matter.

The ACTING CHAIRMAN. Mr. Matthews may be a witness. You can then ask him any questions you may desire, if he should ask you questions.

The WITNESS. Mr. Matthews is a lawyer and is capable of conducting his own case. I am not.

By the ACTING CHAIRMAN:

Q. You decline to state your age, business, and occupation?—A. Under the circumstances I do.

Q. I will ask you another question. When did you make the acquaintance of Senator Matthews?—A. I decline to answer.

Q. Have you ever placed in Mr. Matthews's custody any papers of any character; and, if so, what papers?—A. I decline to answer.

By Mr. DAVIS:

Q. When did you first see Mr. Matthews?—A. I decline to answer.

Q. Have you talked with any counsel on this subject at all?—A. I have not.

Q. Have you talked with any individual who gave you this advice?—A. I have not, except that I asked a gentleman to-day if I was not entitled to counsel before the committee.

By the ACTING CHAIRMAN:

Q. Who was that?—A. I spoke to two gentlemen, Mr. Parish and Mr. Springer, of the House committee.

By Mr. DAVIS:

Q. What did they say to you?—A. Mr. Springer said he thought the committee would not refuse to allow me counsel.

Q. What did Mr. Parish say?—A. Mr. Parish said the same thing.

Mr. HOAR. I move that the chairman be requested to inform the witness that the

The ACTING CHAIRMAN. We have reporters taking every word you say in sh and it will undoubtedly be published in the newspapers.

The WITNESS. If the newspapers are taking it in short-hand and publishin morning, I see no objection to my having counsel. It is simply the additi more gentleman to be present.

The ACTING CHAIRMAN. This is a question we cannot argue with you. decided it.

By Mr. INGALLS:

Q. I understand your desire to be to employ counsel at your own expense?- sir; if I shall get counsel. I do not presume anybody will do it without ex least I have not been fortunate enough so far to get anybody who would.

Mr. HOAR. I move that the room be cleared for consultation.

The WITNESS. I will state again that I have no desire to throw any obstacl way, and I simply make that request.

The ACTING CHAIRMAN. But you are throwing an absolute obstacle in the

The WITNESS. I think it is only justice to myself to allow that.

Mr. DAVIS. You are a witness to tell the truth.

The WITNESS. I propose to tell the truth.

Mr. DAVIS. To tell the truth in regard to Mr. Matthews, nothing else. W fining it to that purpose, just to tell the truth, and if every witness in a trial allowed counsel, either before a court or a committee, there would be no end.

The WITNESS. I am not brought here simply as a witness, but I am pu myself.

Mr. DAVIS. No.

The ACTING CHAIRMAN. Not that.

Mr. DAVIS. So far as we are concerned you are only a witness.

By Mr. WHYTE:

Q. One single question. You then set at defiance, Mr. Anderson, the commi Senate, simply because you are not permitted to have counsel here at your ow tion?—A. That is drawing it rather strongly. I simply say that I decline to a questions because I do not think I am allowed the privilege I claim as an Am zen. I will say further that if Mr. Matthews will say he will go before the P mittee of the House I will testify here.

The ACTING CHAIRMAN. We will not hear that.

Mr. WHYTE. We cannot have any terms about that. I only want to kno derstand you that unless you are permitted to have counsel against the wis committee you decline to testify, and set at defiance the Senate of the United S

By Mr. INGALLS:

Q. One point, Mr. Anderson. I understood you to be about to say that if thews would go before the Potter committee you would willingly testify be

By the ACTING CHAIRMAN:

Q. I will ask a question now, Mr. Anderson. When did you make up your mind not to testify before this committee unless you were represented by counsel?—A. I thought of it last night coming over here.

Q. Was that the first time you had that impression?—A. That was the first time.

Q. Why did you leave the city, after the committee on the other side had discharged you, without notifying this committee?—A. I called on you with my attorney twice, sent in my card, and you refused to admit us. My wife was sick, and I had other business to look after in this world besides hanging round Washington.

Q. You have never sent me your card.—A. My attorney did.

Q. Who is your attorney?—A. Mr. Sypher, of Philadelphia.

Q. I have never received any card from Mr. Sypher.—A. I was present twice when he sent in his card to the committee-room on appropriations.

By Mr. INGALLS:

Q. Is he the gentleman whom you desire to have appear for you?—A. I have no knowledge whom I shall.

Q. You spoke of him as being your attorney.—A. Mr. Sypher is not in the city. He was my attorney before the House committee.

Q. Were you represented before the House committee by attorney who was present before the committee?—A. Yes, sir.

By the ACTING CHAIRMAN:

Q. And put questions for you?—A. No questions; but he represented my interests.

Q. By leave of the committee?—A. By leave of the committee.

By Mr. DAVIS:

Q. Did you ask the House committee to allow you an attorney?—A. Not specially.

By Mr. INGALLS:

Q. Did they know that he was there as your attorney?—A. Yes, sir.

By Mr. HOAR:

Q. What is Mr. Sypher's first name?—A. J. R.

By Mr. DAVIS:

Q. Did he put any questions to you?—A. None at all

By Mr. INGALLS:

Q. Did he advise you what to answer or refuse to answer?—A. Not at all. Mr. Sypher knew this whole question a year or more ago, and was simply there to look after my interests.

By the ACTING CHAIRMAN:

Q. What are your interests in this matter?—A. My interests are considerable. I have been laboring under the impression that I was liable at any time, the last year or two, to be indicted for perjury in Louisiana in connection with these returns. I went to Mr. Sypher in connection with that matter.

Q. Do you think you are in danger of that here in Washington?—A. Not if I prove that I did not forge returns That has been charged against me.

By Mr. DAVIS:

Q. Did you ask the committee of the House for the privilege of having an attorney?—A. Not directly.

Q. How did you do it?—A. I believe I spoke to Mr. Gibson, of the New York Sun, and told him I should like to be represented by counsel some time ago, and my recollection is that he said he would have it arranged.

By the ACTING CHAIRMAN:

Q. And you think it was arranged?—A. Yes.

By Mr. DAVIS:

Q. You simply went in when Mr. Sypher was present with you, and he asked no questions?—A. None at all.

Q. And did not ask leave to ask any?—A. None at all.

The committee-room was cleared for deliberation; and after some time spent in consultation, Mr. Matthews was invited to attend, and he accordingly appeared.

The ACTING CHAIRMAN. You have heard, Mr. Matthews, what Mr. Anderson has said. Have you any suggestion to make to the committee in reference to going on without Mr. Anderson's testimony?

the other House the statements which he has already made under oath before it, a
which constituted the ground on the basis of which I asked the Senate for the appoin
ment of this committee. In case the committee think that that is sufficient for the pu
pose of the investigation with which they are charged, and obtain that testimony, I a
ready to go on as if it had been delivered again here. But whether the committee oug
to take that course I think is a question which the committee ought to decide for the
selves. I do not wish to be considered as giving any opinion or advice or expressing a
wish in regard to that matter.

The ACTING CHAIRMAN. I think we can now relieve you from attendance, Mr. M
thews.

Mr. Matthews thereupon retired; and the doors were thrown open to the public g
erally.

The ACTING CHAIRMAN. Mr. Reporter, will you state what took place a moment a
when Mr. Matthews was called in.

The stenographer read the statement made by Mr. Matthews.

The ACTING CHAIRMAN. The reporter has stated all that took place. Stand up, M
Anderson. [James E. Anderson rose.] The committee have decided that we will
quire the testimony of Mr. Anderson; and I now wish to ask you, Mr. Anderson, if y
are willing to answer such questions as may be propounded to you by the committee
any member of it?

Mr. ANDERSON. I am not.

Q. You still persist?—A. I still persist.

Q. In refusing to answer any question pertaining to the matter before this comm
tee?

Mr. ANDERSON. I do.

Q. And you therefore set the committee at defiance?

Mr. WHYTE. Mr. Chairman, in the absence of the Senate, we have no power to p
ish Mr. Anderson for the contempt in refusing to answer our questions. Under th
circumstances, I move that this committee adjourn, subject to the call of the chairm

The motion was agreed to.

TUESDAY, *December* 10, 1878

The committee met at 10½ o'clock a. m., pursuant to call.

Present: Messrs. Edmunds, Allison, Ingalls, Hoar, Davis, and Whyte.

On motion of Mr. Allison, John W. Anderson was appointed clerk.

Mr. Edmunds asked to be excused from service as chairman of the committee, in vi
of his other duties; and his request was granted.

On motion of Mr. Davis, Mr. Allison was thereupon elected chairman.

On motion of Mr. Edmunds, it was

Ordered, That there be reported to the Senate the following:

"*Resolved*, That the House of Representatives be respectfully requested to transmit
the Senate a copy of the testimony of one James E. Anderson relating to the Hon. St

[Forty-sixth Congress—First and second sessions.]

JOHN J. INGALLS,

Senator from Kansas from March 4, 1873. [*December* 1, 1885, *still holding seat.*]

March 19, 1879, the Vice-President laid before the Senate a memorial of certain members of the legislature relative to the election of Mr. Ingalls to his second term of office, beginning March 4, 1879. The memorial was referred to the Committee on Privileges and Elections. March 27, certain letters transmitting a report of a committee of the house of representatives of Kansas, which had investigated said election, was referred to the committee. Certain other papers relative to the election were at other times referred to the committee. June 21, the committee were authorized to make an investigation of the election. February 17, 1880, the committee reported the testimony taken and the following resolution: "*Resolved*, That the testimony taken by the committee proves that bribery and other corrupt means were employed by persons favoring the election of Hon. John J. Ingalls to the Senate, to obtain for him the votes of members of the legislature of Kansas in the Senatorial election in that State. But it is not proved by the testimony that enough votes were secured by such means to determine the result of the election in his favor. Nor is it shown that Senator Ingalls authorized acts of bribery to secure his election." Views of the minority concurred in the part of the report exonerating Mr. Ingalls, but held that "when the report goes further and finds that persons favoring Mr. Ingalls's election were guilty of such practices, it should in justice state what was clearly and unquestionably proved, that such means were employed in opposition to his election." No further action was taken by the Senate. Mr. Ingalls was allowed reimbursement of the necessary expenses incurred in defense of his title to his seat.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journals, 46th Cong., and the report of the committee (without the testimony) from Senate Reports, 46th Cong., 2d sess., No. 277.

Special references to the debates of each day are inserted below.

SATURDAY, *February* 22, 1879.

The Vice-President laid before the Senate the credentials of John J. Ingalls, elected a Senator by the legislature of Kansas for the term of six years commencing March 4, 1879; which were read.

[First session of the Forty-sixth Congress.]

TUESDAY, *March* 18, 1879.

The credentials of John J. Ingalls having been heretofore presented, the oaths prescribed by law were administered to him, and he took his seat in the Senate.

WEDNESDAY, *March* 19, 1879.

The Vice-President laid before the Senate a memorial of certain members of the legislature of Kansas in relation to the election of John J. Ingalls as a Senator from that State; which was referred to the Committee on Privileges and Elections.

THURSDAY, *March* 27, 1879.

The Vice-President laid before the Senate a letter of F. S. Stumbaugh and L. F. Eggers, transmitting a copy of the report of the special committee of the house of representatives of Kansas charged with the investigation of the election of John J. Ingalls to the United States Senate; which was referred to the Committee on Privileges and Elections.

THURSDAY, *April* 24, 1879.

The President *pro tempore* laid before the Senate additional papers signed by F. S. Stumbaugh and L. F. Eggers, in relation to the election of John J. Ingalls to the Senate as a Senator from the State of Kansas; which were referred to the Committee on Privileges and Elections.

FRIDAY, *June* 20, 1879.

Mr. Saulsbury, from the Committee on Privileges and Elections, reported the following resolution for consideration; which was ordered to be printed:

"*Resolved*, That the Committee on Privileges and Elections, to which has been referred memorials in relation to the election of Hon. J. J. Ingalls a Senator by the legislature of the State of Kansas, be, and said committee is hereby, authorized and instructed to investigate the statements and charges contained in said memorials; and for that purpose

said committee is empowered to send for persons and papers, administer oaths, employ a stenographer, clerk, and sergeant-at-arms, and to do all such acts as are necessary and proper in the premises. And said committee may appoint a subcommittee of its members to take testimony in Kansas or elsewhere in the case, which shall report the testimony taken to the committee in December next; and such subcommittee shall have the same authority to administer oaths and to do other necessary acts as are herein conferred upon the full committee; and the said committee, and the subcommittee which it may appoint, may sit during the recess of the Senate for the purpose of making the investigation hereby authorized."

SATURDAY, *June* 21, 1879.

The Senate proceeded to consider the resolution (given above) yesterday reported by Mr. Saulsbury from the Committee on Privileges and Elections; and

Resolved, That the Senate agree thereto.

TUESDAY, *June* 24, 1879.

Mr. Bailey, from the Committee on Privileges and Elections, reported the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the expenses of the investigation ordered by the Senate to be made by the Committee on Privileges and Elections in relation to certain matters connected with the election of Hon. J. J. Ingalls, a Senator from the State of Kansas, be paid out of the 'miscellaneous items' of the contingent fund of the Senate, to be disbursed upon vouchers approved by the chairman of the committee or the chairman of the subcommittee that may be designated by said committee to take testimony in the case."

[Second session of the Forty-sixth Congress.]

MONDAY, *December* 15, 1879.

Mr. Saulsbury, from the Committee on Privileges and Elections, reported the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Committee on Privileges and Elections be authorized to have printed for its use the testimony taken in Kansas relative to the charges contained in the memorials relative to the election of John J. Ingalls as Senator from the State of Kansas, and such other testimony as may be taken in the said case."

THURSDAY, *December* 18, 1879.

Mr. Saulsbury, from the Committee on Privileges and Elections, reported the following resolution; which was considered by unanimous consent, and agreed to:

"Whereas J. V. Admire, E. B. Purcell, George T. Anthony, Len. T. Smith, and Levi Wilson, citizens and residents of the State of Kansas, were duly served with subpœnas in the months of September and October, 1879, issued by the subcommittee of the Senate Committee on Privileges and Elections, then sitting in Topeka, in said State of Kansas, commanding each of them to appear before said subcommittee and then and there testify in reference to the subject-matters then under consideration by said subcommittee, to wit, charges relating to the election of John J. Ingalls a Senator from said State of Kansas; and

"Whereas said Admire, Purcell, Anthony, Smith, and Wilson refused to appear and testify before said subcommittee as required by said subpœnas: Therefore,

"*Resolved*, That an attachment issue forthwith directed to the Sergeant-at-Arms of the Senate commanding him to bring said J. V. Admire, E. B. Purcell, George T. Anthony, Len. T. Smith, and Levi Wilson forthwith to the bar of the Senate to answer for contempt of a process of this body."

THURSDAY, *January* 8, 1880.

The Sergeant-at-Arms appeared at the bar of the Senate having in custody Leonard T. Smith, Levi Wilson, and E. B. Purcell, arrested by order of the Senate and brought to its bar to answer for a contempt of a process of the Senate.

Whereupon

The Vice-President laid before the Senate the return of the writ of attachment issued to the Sergeant-at-Arms commanding him to bring J. V. Admire, George T. Anthony, Leonard T. Smith, Levi Wilson, and E. B. Purcell to answer for a contempt of a process of the Senate.

The return having been made,

Leonard T. Smith, one of the witnesses, advanced and made statement of his reasons for failure to answer to the summons of the Senate.

On motion by Mr. McMillan that the witness be discharged;

On motion by Mr. Garland to amend the motion as follows, viz: "That the witness, having purged himself of contempt, be discharged from the rule,"

After debate, it was determined in the affirmative.

Mr. Saulsbury submitted the following resolution as an amendment to the motion of Mr. McMillan as amended:

"Whereas Leonard T. Smith, now in custody of the Sergeant-at-Arms on an attachment for contempt for refusing obedience to a summons to appear before a committee of the Senate, has purged himself of contempt, and expressed his willingness to appear before the Committee on Privileges and Elections and answer such proper questions as may be put to him: Therefore,

"*Resolved*, That said Leonard T. Smith be discharged from arrest and that he appear before said Committee on Privileges and Elections and testify under the subpœna served upon him."

It was determined in the negative.

The question recurring on the motion of Mr. McMillan, as amended, it was determined in the affirmative.

Levi Wilson, another of the witnesses, having made statement of his reasons for failure to answer the summons of the Senate,

On motion by Mr. Saulsbury that the witness be discharged from the rule, it was determined in the affirmative.

E. B. Purcell, another of the witnesses, having made statement of his reasons for failure to answer to the summons of the Senate,

On motion by Mr. Saulsbury that the witness be discharged from the rule, it was determined in the affirmative.

On motion by Mr. Saulsbury,

Ordered, That the Sergeant-at-Arms have further time to make return concerning the failure of J. V. Admire and George T. Anthony, the other witnesses named in the writ of attachment of December 18, 1879, to answer for a contempt of a process of the Senate.

On motion by Mr. Davis, of Illinois, the Senate proceeded to the consideration of executive business.

[The debate is found on pages 234–241 of the Congressional Record, vol. x, part 1.]

TUESDAY, *January* 20, 1880.

The Sergeant-at-Arms appeared at the bar of the Senate, having in custody J. V. Admire, to answer for contempt in refusing obedience to a summons of the Senate.

Whereupon

The Vice-President laid before the Senate the return of the writ of attachment issued to the Sergeant-at-Arms December 18, 1879, commanding him to bring J. V. Admire, G. T. Anthony, L. T. Smith, Levi Wilson, and E. B. Purcell to answer for a contempt of a process of the Senate.

The return was read.

The witness having made statement of his reasons for failure to answer to the summons of the Senate,

On motion by Mr. Saulsbury that the witness be discharged from the rule, it was determined in the affirmative.

On motion by Mr. Saulsbury,

Ordered, That George T. Anthony, the other witness named in the writ of attachment of December 18, 1879, be discharged as from contempt without appearing before the Senate.

On motion by Mr. Davis, of West Virginia, the Senate proceeded to the consideration of executive business.

[The debate is found on page 415 of the Congressional Record, vol. x, part 1.]

TUESDAY, *February* 17, 1880.

Mr. Saulsbury, from the Committee on Privileges and Elections, to whom was referred the memorials in relation to the election of John J. Ingalls, a Senator from the State of Kansas, submitted a report (No. 277) thereon, accompanied by the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the testimony taken by the committee proves that bribery and other corrupt means were employed by persons favoring the election of Hon. John J. Ingalls in the Senatorial election to the Senate to obtain for him the votes of members of the legislature of Kansas in that State. But it is not proved by the testimony that enough votes were secured by such means to determine the result of the election in his favor, nor is it shown that Senator Ingalls authorized acts of bribery to secure his election."

Mr. Cameron, of Wisconsin, asked and obtained leave to submit the views of a minority of the Committee on Privileges and Elections; which were ordered to be printed to accompany the foregoing report.

On motion by Mr. Saulsbury,

Ordered, That the testimony taken by the Committee on Privileges and Elections in the investigation of the election of John J. Ingalls to the United States Senate from the State of Kansas be printed, and that the committee be discharged from the further consideration of the memorials in relation thereto.

REPORT OF COMMITTEE.

[The committee consisted of Messrs. Saulsbury (chairman), Hill of Georgia, Kernan, Bailey, Pryor, Vance, Cameron of Wisconsin, Hoar, and Logan.]

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1880.—Ordered to be printed.

Mr. Saulsbury, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, to whom were referred memorials relating to the election of Hon. John J. Ingalls a Senator from the State of Kansas by the legislature of that State, have had the same under consideration and submit the following report:

The committee, under the authority of a resolution adopted by the Senate, appointed a subcommittee of its members with instructions to investigate the charges and statements contained in said memorials. In discharge of the duty assigned them the members of the subcommittee met during the recess of the Senate in the city of Topeka, said State, and examined a large number of witnesses, whose testimony, together with the testimony of witnesses examined before the whole committee during the present session is herewith submitted to the Senate.

The views entertained by the committee render it unnecessary to refer more particularly to the testimony, which will be found to sustain the conclusions of the committee expressed in the following resolution:

Resolved, That the testimony taken by the committee proves that bribery and other corrupt means were employed by persons favoring the election of Hon John J. Ingalls to the Senate to obtain for him the votes of members of the legislature of Kansas in the Senatorial election in that State. But it is not proved by the testimony that enough votes were secured by such means to determine the result of the election in his favor. Nor is it shown that Senator Ingalls authorized acts of bribery to secure his election.

VIEWS OF THE MINORITY.

The undersigned, a minority of the Committee on Privileges and Elections, who were directed to investigate certain statements and charges concerning the recent election of a Senator in the State of Kansas, respectfully submit our views as follows:

We concur in part of the report. We exonerate Mr. Ingalls from any complicity with improper practices. We also find that the result of the election was not accomplished by such practices. We think that when the report goes further and finds that persons favoring Mr. Ingalls's election were guilty of such practices, it should in justice state what was clearly and unquestionably proved, that such means were employed in opposition to his election.

ANGUS CAMERON.
JOHN A. LOGAN.
GEO. F. HOAR.

[Third session of the Forty-sixth Congress.]

FRIDAY, *January* 21, 1881.

Mr. Plumb submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

"*Resolved*, That there be paid to J. V. Admire, L. T. Smith, E. B. Purcell, and George T. Anthony, out of the contingent fund of the United States Senate, the mileage for attending as witnesses from the State of Kansas in the investigation of the election of Hon. J. J. Ingalls the same as the other witnesses received."

[The debate is found on pages 814, 815 of the Congressional Record, vol. xi, part 1.]

FRIDAY, *January* 28, 1881.

On motion by Mr. Hill, of Georgia,

Ordered, That the Committee to Audit and Control the Contingent Expenses of the

Senate be discharged from the further consideration of the resolution submitted by Mr. Plumb January 21, 1881, directing the payment of certain witnesses in the investigation of the election of the Hon. J. J. Ingalls, and that it be referred to the Committee on Privileges and Elections.

REIMBURSEMENT OF MR. INGALLS'S EXPENSES.

FRIDAY, *March* 31, 1882.

Mr. Hoar, from the Committee on Privileges and Elections, reported the following resolution; which was read the first and second times by unanimous consent:

"*Resolved*, That there be paid out of the contingent fund of the Senate the sum of $8,195 to John J. Ingalls, a Senator from the State of Kansas, in reimbursement of expenses necessarily incurred by him in defense of his title to his seat."

The Senate proceeded, by unanimous consent, to consider the said resolution as in Committee of the Whole; and no amendment being made, it was reported to the Senate.

Ordered, That it be engrossed and read a third time.

The said resolution was read a third time by unanimous consent.

Resolved, That the Senate agree thereto.

[Special session of Senate, October, 1881, and first session of the Forty-seventh Congress.]

ELBRIDGE G. LAPHAM AND WARNER MILLER,

of New York.

October 11, 1881, the day on which Messrs. Lapham and Miller took their seats, a memorial was presented remonstrating against their admission until certain allegations affecting their elections had been investigated. October 21, the memorial was referred to the Committee on Privileges and Elections. December 12, the committee reported back the memorial and asked that it lie on the table, and that the committee be discharged from its further consideration. It was so ordered December 13. The statement of Mr. Hill, in the nature of an oral report, given below, will show the nature of the allegations of the memorial, and the reasons for the action of the committee.

The history of the case here given consists of a transcript of the proceedings of the Senate relating to it from Senate Journal, 47th Cong., 1st sess., and the remarks of Mr. Hill from the Congressional Record, vol. xiii, part 1, pages 70, 71.

There were no debates.

[Special session of Senate, October, 1881.]

MONDAY, *October* 10, 1881.

Mr. Edmunds presented the credentials of Elbridge G. Lapham, elected a Senator by the legislature of New York to fill the vacancy occasioned by the resignation of the Hon Roscoe Conkling; which were read.

Mr. Edmunds presented the credentials of Warner Miller, elected a Senator by the legislature of New York to fill the vacancy occasioned by the resignation of the Hon Thomas C. Platt; which were read.

TUESDAY, *October* 11, 1881.

On motion by Mr. Edmunds that the oath prescribed by law be now administered to Elbridge G. Lapham and Warner Miller, Senators-elect from the State of New York;

Pending which,

Mr. McPherson presented a memorial of certain members of the legislature of New York, remonstrating against the admission of Mr. Lapham and Mr. Miller to seats in the Senate until certain allegations affecting their elections have been investigated.

Ordered, That it lie on the table.

The question recurring upon the motion of Mr. Edmunds that the oath prescribed by law be now administered to the Senators-elect from the State of New York, it was determined in the affirmative.

Mr. Lapham and Mr. Miller then appeared, and the oath prescribed by law having been administered to them by the President *pro tempore*, they took their seats in the Senate.

FRIDAY, *October* 21, 1881.

Mr. McPherson presented a memorial of Miner Gallop and E. H. Pinney, of New York, remonstrating against the admission of Warner Miller and Elbridge G. Lapham to seats in the Senate until certain allegations affecting their election shall have been investigated; which was referred to the Committee on Privileges and Elections; and,

On motion by Mr. McPherson,

Ordered, That the memorial of certain members of the legislature of New York relating to the same subject, heretofore presented, be referred to the Committee on Privileges and Elections.

[First session of the Forty-seventh Congress.]

THURSDAY, *December* 8, 1881.

On motion by Mr. Hoar,

Ordered, That the petitions of the citizens and members of the legislature of New York concerning the elections of Senators Miller and Lapham be taken from the files of the Senate and referred to the Committee on Privileges and Elections.

MONDAY, *December* 12, 1881.

Mr. Hill, of Georgia, from the Committee on Privileges and Elections, to whom was referred the memorial of certain members of the legislature of the State of New York

affecting the right of the present Senators from that State to occupy seats on the floor of the Senate, reported it back, with the recommendation that the committee be discharged from the further consideration thereof; which was agreed to.*

[Remarks of Mr. Hill, of Georgia, in the nature of an oral report, delivered December 12, 1881, and found on pages 70, 71 of the Congressional Record, vol. xiii, part 1.]

"I am instructed by the Committee on Privileges and Elections to report back to the Senate certain memorials from members of the legislature of New York affecting the right of the present Senators from that State to occupy seats in this Chamber, and to ask that the memorials lie on the table and the committee be discharged from their further consideration.

"In deference to the memorialists, and at the special request of some of them, it is proper that I should state briefly and generally the reasons which authorize this conclusion.

"The memorials set forth five reasons as grounds why these gentlemen should not be allowed to sit here. The first alleges that the legislature did not proceed in separate bodies to vote upon the question until the third Tuesday after notice of the vacancy was communicated by the governor. The facts are such as to create some controversy as to whether they did proceed on the second Tuesday or the third Tuesday after the notice; but, in any view, the committee are unanimously of the opinion that the legislature was not deprived of its constitutional right to elect Senators to this body.

"The second allegation is that at one of the joint sessions of the general assembly a quorum of the State senators was not present. It is not alleged that there was not a quorum present of each body on the days the respective elections took place, but it is alleged or claimed that under the act of 1866 the failure of either body to be present with a quorum on any day deprives the legislature of the right to elect. The committee differ with the memorialists in that view. We think that one body of the legislature could not deprive the legislature of the right to elect by such absence, if unquestionably on the day of the election a quorum of each body of the legislature was present and voting. We think the reason alleged in this ground is not sufficient to invalidate the election.

"The third ground alleged is that there was not a majority of the whole legislature actually voting for the members chosen. In our opinion that is not necessary. There was a quorum of each house present in the joint assembly; there was a majority of that quorum actually voting for the members chosen. In our opinion that was a valid election.

"It is alleged specifically in the memorial that the Stockton case is a precedent to the contrary. On examination it will be found that the Stockton case is not a precedent to the contrary. Mr. Stockton, of New Jersey, in the celebrated case so well known, was chosen, not by a majority, but he was chosen by a plurality vote, the legislature in joint session having declared before the election that a plurality should elect. The Senators now occupying the seats in question, from New York, were not chosen by a plurality vote; they were each chosen by a majority, a quorum of each body being present, and a majority of the joint assembly voting. I will state that if the cases from New York were like the case from New Jersey, I do not think at this day any gentleman would regard the Stockton case as a precedent. Unquestionably the body that elects has a right to prescribe that a plurality may elect, and I think the report made by Senator Trumbull on that occasion is not only correct, but conclusive of the law of the case. The committee, therefore, are of the opinion that that ground is not sufficient to invalidate the election.

"The fourth ground relates to Hon. W. Miller, and alleges that he is guilty of certain conduct in violation of section 1781 and section 1782 of the Revised Statutes which disqualify a member from holding any office of honor, trust, or profit under the United States Government. It is sufficient to say that the Senator from New York has never been convicted of a violation of those sections of the Revised Statutes, and a simple inspection of the sections shows that it is conviction that disqualifies, and not allegations by outsiders or third persons who do not prosecute. Therefore the committee overrule that ground, and think it insufficient, conceding the facts alleged to be true for argument; we do not know anything about them.

"The last ground is one of fact. Before I have alluded to what are called legal grounds or allegations that by legal operation the election is void. The last ground alleges that there were rumors of bribery in procuring the election of these gentlemen. The allegation of mere rumors of bribery is not sufficient, unaccompanied with evidence, to require investigation at the hands of the Senate or of its committees. It is alleged in this memorial that one State senator of New York is under indictment in that State for offering a bribe to a member of the house to vote in the Senatorial election. It is due to the Senators holding the seats that the committee should say that that indictment is not for a

*It appears from the Congressional Record, vol. xiii, part 1, page 76, that the motion that the committee be discharged was agreed to December 13, 1881.

bribe offered to vote for either one of the present Senators. It is due also to state that while we find by reports that have been sent to us and investigations had that there were a great many scandals in connection with the Senatorial election in New York during the late session of the legislature, most of these scandals occurred before the two gentlemen now holding seats became even candidates before that body.

"Therefore, sir, the committee, without going further into details, hold that the respective grounds alleged and all of them together are not sufficient to authorize further investigation, and do not make a case invalidating the election of the Senators from New York. We believe from all that is before us that the elections were valid and ought to be so declared. We ask, therefore, that the committee be discharged from the further consideration of the subject."

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49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 48.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1886.—Ordered to be printed.

Mr. VAN WYCK submitted the following

RESOLUTION:

Resolved, That the Committee on Public Buildings and Grounds be directed to confer with the Architect of the Capitol and report whether suitable buildings can be erected at the street railway stations on the public grounds east of the Capitol, without detriment to the said grounds, to be used for the employés of said railways; also to report what legislation is necessary to require the companies owning said railways to construct such buildings pursuant to the plans to be furnished by said Architect.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 49.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1886.—Ordered to be printed.

Mr. VAN WYCK submitted the following

RESOLUTION:

Whereas it is alleged that the national banks in the District of Columbia have at no time since the enactment of the banking law paid local taxes in said District: Therefore,

Resolved, That the Committee on the District of Columbia be directed to investigate as to above allegation, and report what legislation, if any, is necessary to require the payment of taxes by said corporations

C

49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 50.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1886.—Ordered to lie on the table and be printed.

Mr. MORRILL, from the Committee on Public Buildings and Grounds, reported the following

CONCURRENT RESOLUTION:

Resolved by the Senate of the United States (the House of Representatives concurring), That the circle at the western entrance to the Capitol Grounds from Pennsylvania avenue shall be, and hereby is, forever set apart as a site for a statue of Christopher Columbus; and the circle at the western entrance to the Capitol Grounds from Maryland avenue shall also be, and hereby is, forever set apart as a site for a statue of the Marquis de La Fayette, and the Naval Monument, now standing upon the circle first herein mentioned, shall be removed and placed upon the triangular reservation bounded by Connecticut avenue, Twentieth street, and Q street.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 51.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1886.—Ordered to lie on the table and be printed.

Mr. CALL submitted the following

RESOLUTION:

Resolved, That the Committee on the Judiciary be instructed to report a bill for the retirement or removal of judges of the district and circuit courts when from any cause they shall become subject to any permanent disability and unable to perform the duties of their office; discriminating between disability because of drunkenness or the excessive use of intoxicating drinks, so that disability of this kind may be punished by impeachment and removal from office.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 52.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1886.—Ordered to lie on the table and be printed.

Mr. CALL submitted the following

RESOLUTION:

Resolved, That all railroad land grants heretofore made when the land was not earned by the completion of the line of railroad, and the performance of the conditions required by the granting act, within the time required therein, and when the time has not been extended by an act of Congress, or shall not hereafter be extended, shall be declared forfeited and opened to homestead entry and cash entry in small bodies, securing to actual settlers the preferred right in all cases to make entries of their homes to the extent of one hundred and sixty acres, and confirming to all purchasers of town sites, where lots have been sold and improvements made, their title to the same.

And the Committee on Public Lands is hereby instructed to report a bill to this effect to the Senate.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1886.—Referred to the Committee on the District of Columbia and ordered to be printed.

The President *pro tempore* laid before the Senate the following letter from Charles White, president of the Capitol, North O Street and South Washington Street Railway Company, transmitting a statement of the operations of said road for the fiscal years ending April 30, 1877, to 1885, inclusive:

[Office of secretary and treasurer Capitol, North O Street and South Washington Railway Company, corner Third and B streets S. W.; Charles White, president; W. E. Boughton, secretary and treasurer; Andrew Glass, superintendent.]

WASHINGTON, D. C., *January* 28, 1886.

SIR: I herewith submit to your honorable body a true and accurate statement of the operations of the Capitol, North O Street and South Washington Railway Company for the fiscal years ending April 30, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, and 1885.

Yours, very respectfully,

CHAS. WHITE,
President Cap., North O St. and South Wash. Ry. Co.

Hon. JOHN SHERMAN,
President United States Senate.

Report of the Capitol, North O Street and South Washington Railway Company.

[Treasurer's report fo the fiscal year ending April 30, 1877.]

Receipts.	Amount.	Disbursements.	Amount.
To balance May 15, 1876	$2, 857 00	By running expenses	$36, 604 02
To passenger receipts	40, 242 43	By taxes (personal and real estate)	788 99
To miscellaneous receipts	443 55	By pavement repairs	1, 651 23
To assessment on capital stock	21, 568 00	By changing track, 1st st. and Pa. ave.	1, 065 47
To bills payable	2, 000 00	By construction	4, 636 49
		By buildings	671 76
		By equipment	892 93
		By real estate	235 70
		By bills payable	17, 271 36
		By balance May 1, 1877	3, 293 03
	67, 110 98		67, 110 98

[Treasurer's report for fiscal year ending April 30, 1878.]

To balance May 1, 1877	$3, 293 03	By running expenses	$35, 749 96
To passenger receipts	40, 295 78	By taxes (real estate and personal)	933 42
To miscellaneous receipts	1, 790 46	By pavement repairs	1, 300 66
To bills payable	2, 828 85	By pavement (Pennsylvania avenue)	2, 828 85
		By dividends	3, 484 50
		By bills payable	2, 383 10
		By balance May 1, 1878	1, 527 63
	48, 208 12		48, 208 12

Report of the Capitol, North O Street and South Washington Railway Company—C

[Treasurer's report for fiscal year ending April 30, 1879.]

Receipts.	Amount.	Disbursements.	Am
To balance May 1, 1878	$1, 527 63	By running expenses	$31,
To passenger receipts	42, 044 31	By taxes (real estate and personal)	
To miscellaneous receipts	1, 243 85	By pavement repairs	1,
To capital stock	75 00	By dividends	2,
To bills payable	720 00	By bills payable	5,
		By balance May 1, 1879	4,
	45, 610 79		45,

[Treasurer's report for fiscal year ending April 30, 1880.]

To balance May 1, 1879	$4. 359 88	By running expenses	$33,
To passenger receipts	44, 300 90	By taxes (real estate, personal, and special)	8,
To miscellaneous receipts	1, 717 32	By pavement repairs	
		By dividends	9
		By balance May 1, 1880	2
	50, 378 10		50

[Treasurer's report for fiscal year ending April 30, 1881.]

To balance May 1, 1880	$2, 974 86	By running expenses	$34
To passenger receipts	46, 764 43	By taxes (real estate, personal, and special)	2
To miscellaneous receipts	1, 941 93	By pavement repairs	
To capital stock	18, 516 00	By extension	4
		By dividends	11
		By balance May 1, 1881	16
	70, 197 22		70

[Treasurer's report for fiscal year ending April 30, 1882.]

To balance, May 1, 1881	$16, 525 52	By running expenses	$53
To passenger receipts	61, 511 41	By taxes (real estate, personal, and special)	2
To miscellaneous receipts	4, 991 92	By pavement repairs	1
To capital stock	37, 916 00	By extension	53
To bills payable	14, 000 00	By dividends	14
		By bills payable	6
		By balance, May 1, 1882	4
	134, 944 85		134

[Treasurer's report for fiscal year ending April 30, 1883.]

To balance, May 1, 1882	$4, 212 56	By running expenses	$56
To passenger receipts	68, 641 72	By taxes (real estate, personal, and water)	
To miscellaneous receipts	6, 169 43	By pavement repairs	2
To capital stock	2, 593 00	By extension	10
To bills payable	10, 000 00	By dividends	11
		By balance, May 1, 1883	9
	91, 616 71		91,

Report of the Capitol, North O Street and South Washington Railway Company—Cont'd.

[Treasurer's report for fiscal year ending April 30, 1884.]

Receipts.	Amount.	Disbursements.	Amount.
To balance May 1, 1883	$9,263 23	By running expenses	$65,377 73
To passenger receipts	79,702 38	By taxes (real estate, personal, and water)	761 26
To miscellaneous receipts	2,980 90	By pavement repairs	3,867 52
To capital stock	22,572 00	By extension	12,851 26
To bills payable	3,365 00	By dividends	14,718 00
		By bills payable	16,000 00
		By balance May 1, 1884	4,307 44
	117,883 51		117,883 51

[Treasurer's report for fiscal year ending April 30, 1885.]

To balance May 1, 1884	$4,307 74	By running expenses	$64,919 08
To passenger receipts	88,797 63	By taxes (real estate, personal, and water)	1,158 99
To miscellaneous receipts	1,997 19	By pavement repairs	5,339 01
To bills payable	2,800 00	By dividends	17,500 00
		By bills payable	3,365 00
		By balance May 1, 1885	5,620 48
	97,902 56		97,902 56

Balance May 1, 1885, $5,620.48.

W. E. BOUGHTON,
Secretary and Treasurer.

I solemnly swear that the foregoing is a true and accurate statement of the operations of the Capitol, North O Street and South Washington Railway Company for the years 1883, 1884, and 1885, and that the statement for the years 1877, 1878, 1879, 1880, 1881, and 1882 are true and accurate statements of the operations of said railroad company for the years named as shown from the records of the company.

[SEAL.]

L. I. O'NEAL,
Notary Public, D. C.

O

49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 54.

LETTER

FROM

THE SECRETARY OF WAR,

TO HON. S. B. MAXEY,

In relation to the claim of the State of Texas, presented under the act of June 27, 1882.

JANUARY 29, 1886.—Referred to the Committee on Appropriations and ordered to be printed.

WAR DEPARTMENT,
Washington City, January 27, 1886.

SIR: Referring to our recent conversation in regard to the claim of the State of Texas, presented under the act of June 27, 1882 (22 Stats., 111, 112), I have the honor to inform you that the first installment of the claim (amount, $671,400.29) came before the Department from the Third Auditor of the Treasury July 9, 1884, and the action then taken in the matter appears in the letter from this Department to Mr. Dorn, dated July 16, 1884, copy herewith. The papers therein mentioned were returned to the agent of the State, July 25, 1884. November 2, 1885, the Third Auditor of the Treasury wrote to the Department, transmitting, through Mr. W. H. Pope, agent of the State, the papers in the claim, which papers were received here November 17, 1885, and they are now being stamped and marked.

In regard to the subject of the State claims mentioned in said act, I beg to inform you that the great difficulty experienced in disposing of the claim of the State of Kansas, the first one presented thereunder, has caused the Department to delay taking up the other claims pending. While the title of the act, and the wording of the first section thereof, would seem to convey the impression that the claims were to be adjusted by the Secretary of the Treasury, "with the aid and assistance of the Secretary of War," the whole duty of examining and auditing the claims was, by section 2, imposed upon the Secretary of War, leaving the Treasury Department the simple duty of verifying the computations of the Secretary of War.

The policy thus indicated differed widely from that prescribed in section 236 of the Revised Statutes, that "all claims and demands whatever by the United States, or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury," and differs also from the provisions for the adjudication of State claims under the act of July 27, 1861 (12 Stats., page 276), which were "to be settled upon proper vouchers, to be filed, and passed upon by the proper accounting officers of the Treasury."

The claims arising under the act are said to amount to $10,000,000 (that of Texas is now stated at $1,842,443.78), and the vast labor of examining the papers, pointing out the evidence required to perfect the vouchers and show the necessity of calling out the militia, whose services are charged for, fixing the rate to be allowed on each voucher, and tabulating the same, many thousand in number, must be performed by the Secretary of War, and no provision has been provided by Congress for this laborious work.

Two years were consumed in disposing of the claim of the State of Kansas, and if the same course is to be pursued with the other claims arising under the act, it will be some time before the claim of Texas is reached; that of Nevada being next in order of receipt.

The subject of the claims was brought to the attention of Congress at the last session (see report of Secretary of War for 1884, pages 4, 5, and estimates for 1886 on page 206 of House Ex. Doc. No. 5, Forty-eighth Congress, second session), and it has again been presented in the Secretary's report for 1885 (pages 35 and 36). An estimate to defray the cost of examining the claims will be found on page 225 of House Ex. Doc. No. 5, Forty-ninth Congress, first session.

I inclose draft of a bill which, if enacted, will enable the Department to dispose of the matter.

Copies of the above mentioned reports are inclosed.

Very respectfully,

WM. C. ENDICOTT,
Secretary of War.

Hon. S. B. MAXEY,
United States Senate.

CONGRESS, } SENATE. { MIS. DOC.
Session. } { No. 55.

IN THE SENATE OF THE UNITED STATES.

RY 29, 1866.—Referred to the Committee on Rules and ordered to be printed.

Mr. PLATT submitted the following

RESOLUTION:

olved, That Executive nominations shall hereafter be considered
n session, except when otherwise ordered by vote of the Senate.

Calendar No., 163.

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 55, Part 2.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1886.—Referred to the Committee on Rules and ordered to be printed.
FEBRUARY 8, 1886.—Reported adversely and placed on the Calendar.
APRIL 5, 1886.—Ordered to be printed with amendment proposed by Mr. Platt.

Mr. PLATT submitted the following

RESOLUTION:

Resolved, That Executive nominations shall hereafter be considered in open session, except when otherwise ordered by vote of the Senate.

Amendment to be proposed by Mr. Platt to the resolution relating to the consideration of Executive nominations submitted by him January 29, 1886, and reported adversely by the Committee on Rules (Calendar No., 163).

After the word "considered" insert the words "and acted upon," and at the end of the resolution add the following words: "And so much of section 2, Rule 36, and section 2, Rule 38, of the standing rules of the Senate as conflict with or is inconsistent with the above is to the extent of such inconsistency rescinded."

Calendar No. 163.

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 55, Part 3.

IN THE SENATE OF THE UNITED STATES.

APRIL 14, 1886.—Ordered to be printed.

Amendment intended to be proposed by Mr. Riddleberger to the resolution submitted by Mr. Platt, January 29, 1886.

Strike out all after the word "Resolved" and insert:

"That all matters other than those relating to treaties shall be considered and acted upon by the Senate in open session."

O

Calendar No. 163.

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 55, Part 4.

IN THE SENATE OF THE UNITED STATES.

JUNE 2, 1886.—Ordered to be printed.

Amendment intended to be proposed by Mr. Morrill to the resolution submitted by Mr. Platt, January 29, 1886, for the consideration of Executive nominations in open session.

Strike out the words "Executive nominations," and insert in lieu thereof the words *reciprocity treaties, so called.*

49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 56.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1886.—Ordered to be printed.

Mr. CALL submitted the following

RESOLUTION:

Resolved, That the Committee on Military Affairs are hereby instructed to report a bill modifying the civil service law so that Union soldiers and sailors who served with distinction in the late war shall not be required to submit to a civil service examination before appointment to any of the offices embraced in that law.

O

IN THE SENATE OF THE UNITED STATES.

ARY 2, 1886.—Submitted, considered, and, with the substitute proposed by Mr. Pugh, ordered to be printed and postponed until to-morrow.

Mr. RIDDLEBERGER submitted the following

RESOLUTION:

lved, That it is the sense of the Senate that the Executive of the d States is not restricted by constitution or law in removing or ıding appointees; that the Senate has no constitutional right to e that reasons shall be given for such removals or suspensions, at it is the right of the Senate to call for any papers relating to nduct of removed or suspended appointees or to the qualification tness of all persons whose names are presented to the Senate for nation or rejection, and it is the duty of the Executive to comply ll demands for the same.

AMENDMENT AS A SUBSTITUTE PROPOSED BY MR. PUGH.

lved, (1) That "the Executive power" is expressly "vested" by nstitution "in the President" of the United States, so that "he ake care that the laws be faithfully executed."

That the power of appointment to Federal office is an Executive to be exercised by the President, under the limitation in the Con- on that "he shall nominate, and, by and with the advice and con- the Senate, shall appoint."

That the power of removal or suspension from the powers and of Federal office is also an Executive power vested exclusively President, without any such limitation in the Constitution as is d thereby on the power of appointment, and for its exercise he onsible alone to the people and not to the Senate.

That the right of the President to make nominations to the Sen- ıd of the Senate to advise and consent thereto, are each separate dependent rights to be exercised by the President and Senate tively and separately and independently within their absolute ion; but in relation to the person or persons so nominated the may request information of the President affecting the character lifications of those as to whose appointment he asks the advice nsent of the Senate.

That when the President makes nominations to the Senate of s to be appointed by him to exercise the powers and duties of l officers who have been removed or suspended by him, no law, duty, or public policy requires that he shall send or communicate Senate any cause, reason, or information within his own knowl-

or to put the President on trial by the Senate, or to enforce acc
bility to the Senate for anything he may have done in the exerc
such jurisdiction.

(6) That to obtain information considered by either house o
gress useful in passing necessary and proper laws either house o
gress may request the President, if not deemed by him incomp
with the public interest, to give any information within his own l
edge, or contained in any public documents or records on file, or
lawful custody of any of the Departments, and relating to the a
istration of any public office, or the official conduct or acts affecti
official conduct or duties of any public officer; but for the Sen
make such request of the President, or to direct any member
Cabinet to transmit to the Senate any information or any public
ments or other papers in open or executive session, to enable th
ate in open or executive session to review the propriety, or the
or the information upon which he acted or may have acted in m
removals or suspensions, would be an attempt to obtain such in
tion by false pretenses and for uses and purposes not authori
justified by any law or public policy of the United States; and s
the President grant such request, or require any member of his C
to obey such direction from the Senate, when deemed by him to
been made for such unjustifiable and unlawful uses and pur
would be to recognize and encourage an improper practice and
gerous innovation upon his exclusive and independent rights, p
and duties as President of the United States.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 58.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1886.—Referred to the Committee on Public Buildings and Grounds and ordered to be printed.

Mr. STANFORD submitted the following concurrent

RESOLUTION:

Resolved by the Senate (the House of Representatives concurring), That the committees of the Senate and House of Representatives on Public Buildings and Grounds be, and they are hereby, authorized and directed, and acting concurrently [jointly], to investigate and report upon certain charges made before a committee of the Senate in the year 1853, which were claimed to reflect upon the official conduct of Samuel Strong during his superintendency of the Capitol extension, which charges, then made in his absence and subsequently dropped on his return, are now being revived, it is alleged, in the attempt to damage his character; and the said joint committees are empowered to send for persons and papers and to employ a stenographer.

O

Calendar No. 130.

49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 59.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1886.—Ordered to be printed.

Mr. FRYE, from the Committee on Foreign Relations, reported the following

RESOLUTION:

Resolved, That in the opinion of the Senate, the appointment of a commission in which the Governments of the United States and Great Britain shall be represented, charged with the consideration and settlement of the fishing rights of the two Governments, on the coasts of the United States and British North America, ought not to be provided for by Congress.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 60.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1886.—Ordered to be printed.

Mr. DAWES submitted the following

RESOLUTION:

Resolved, That the Secretary of the Interior be directed to communicate to the Senate copies of all papers which have been filed in the Interior Department, and of all papers which have been presented to any officer of that Department, touching the official and personal conduct of Henry Ward, Indian inspector, during his continuance in said office.

O

H CONGRESS, } SENATE. { MIS. DOC.
st Session. } { No. 61.

IN THE SENATE OF THE UNITED STATES.

:UARY 3, 1886.—Referred to the Committee on Rules and ordered to be printed.

Mr. MORGAN submitted the following

MOTION:

STANDING ORDER.

rdered, That the Senate will take a recess on each day at 2 o'clock, be in session again at 2.30 p. m.
his order may be suspended by a vote of a quorum required in cases djournment, to be had without debate.

ANNUAL REPORT

OF

THE PUBLIC PRINTER.

OFFICE OF THE PUBLIC PRINTER,
Washington, December 24, 1885.

SIR: I have the honor to transmit to Congress, through you, the nual report of this office for the fiscal year ending June 30, 1885.

I am, sir, with respect, your obedient servant,

S. P. ROUNDS,
Public Printer.

Hon. JOHN SHERMAN,
President of the Senate pro tempore.

The Public Printer is required by law to report directly to Congress, d is not connected with any of the Executive Departments of the vernment. Printing is done for the various Departments on requisi-n, but the Public Printer is more closely identified with Congress. e is charged with publishing the Congressional Record and with exe-ting orders for all printing required by both Houses.

I have the honor to report the condition, the amount and cost of the blic printing, binding, lithographing, and engraving; the amount d cost of all paper purchased for the same; a statement of the con-cts entered into for the purchase of paper; all payments made dur-g the fiscal year ending June 30, 1885, including those for material and or for the Congressional Record; the amount of work ordered and e, with a general classification thereof, for each Department; the nber of persons employed in the Government Printing Office, and time each has been employed upon work chargeable to the several propriations, and the amount received.

The law also provides that the Public Printer shall report "such fur-r information touching all matters connected with the Printing Office may be in his possession."

for printing, binding, and binding the Congressional Record, &c.,
publish the amounts thus yearly expended in his annual reports.
information is given in Table No. 6. The Record for the second ses
of the Forty-eighth Congress, including Index, made four volu
comprising 3,048 pages. The number of copies of each volume pri
and bound was 6,900, aggregating 27,600 volumes. These have
disposed of as shown by Table 19.

Not unfrequently at the close of the session it requires one, tw
three issues of the Record to publish speeches held for revision. T
could be printed in one issue if members were to file them with the Pu
Printer within five days after adjournment. I renew my suggestic
last year that, after such adjournment, revised speeches be transm
through the President of the Senate or proper officer of the Hous
spectively, as at present the Public Printer has no discretion, and
print, as the permanent record of Congress, any matter that may be
by a member withholding his speech for revision. This question is
that should be determined by Congress, and the Public Printer sh
have some protection in the premises. Otherwise objectionable m
may appear in the permanent Record, the discussion of which
took place on the floors of Congress. Under the present custom (l
to print), which in my judgment is objectionable, ex-members hav
privilege of printing in the bound Records such matter as they
choose, after they cease to be responsible to the House, and the l
has adjourned *sine die.*

Since the adjournment of the last Congress I have purchased o
the latest improved fast web presses, calculated especially for prin
the Record; also with a view of printing document work (du
the recesses), the press facilities for doing which have been and
now inadequate. The new press will print and fold the whole

delayed in a measure the publication of the remaining volumes. This office has been prepared at all times to promptly execute its portion of the work. There are at this date several hundred pages of matter in type awaiting further action of the Census Bureau. Of the census appropriation for printing there was available June 30, 1885; $145,599.48, with several volumes partially completed, the expense of which will reduce the above balance.

LITHOGRAPHING AND ENGRAVING.

As is shown by the tabular statement, the amount expended for lithographing and engraving is $5,000 less than for the previous year. The experience of the past shows conclusively that it is not as a rule for the best interests of the Government to award this class of work to those who may submit the lowest bid. Where lithographing and engraving has been given to firms without sufficient plant, it has invariably resulted in delay and inferior work. The larger my experience, the more firmly convinced I become that a wise discretion must be exercised in awarding these contracts, either by the Joint Committee on Printing or the Public Printer, otherwise the standard will be lowered, inferior work executed, and the scientific publications, especially, will lose much of their value and become anything but a credit to the Government. A poor engraving is worse than none.

REBELLION RECORD.

This office was authorized to sell volumes 1, 2, 3, 4, and 5 of the Rebellion Record. Volume 6 and subsequent volumes are to be sold by the honorable Secretary of War. Volumes 1, 2, 3, 4, and 5 are out of print. The stereotype plates are in possession of this office, and, in order that the public may obtain complete sets, I again recommend that authority be given to print 2,000 copies of each volume for sale, under the law. There are frequent applications for the early volumes; and in order to meet the demand of the public, it is hoped that Congress will authorize the publication of the five volumes referred to. The expense will be small, and the receipts from the sale of these documents will eventually reimburse the Government for any expenditure in this direction. The prices at which these volumes were sold originally were: Volume 1, $0.75; volume 2, $1; volume 3, $0.75; volume 4, $1; volume 5, $1.

SCIENTIFIC WORK.

During the past eighteen months this office has brought its presswork up to such a high state of perfection on cut-work for the scientific reports, such as the Geological Survey, Smithsonian, Fish Commission, &c., that it has resulted in a marked saving of expenditures. These reports are sent to all parts of the globe, and receive many favorable comments. Congress laid the foundation for this economical

improvement by authorizing the Public Printer to purchase in open market the machinery, material, and printing ink necessary for this class of work. Fine cut-work cannot be satisfactorily executed with old machinery and poor materials.

CONTRACTS FOR PAPER.

The cost of paper of various grades for use of this office is between $300,000 and $400,000 per annum. In my report last year I stated that "the system of contracting with the lowest bidder for paper is not, in my judgment, the best method for obtaining such supplies. Past experience has shown that bids have been submitted much lower than the cost of production, and the consequence is, in too many cases, that there is throughout the year a contest between the office and the contractor as to the proper grade and quality."

Since that time the paper department has received special attention, with a view to reorganization and a more thorough and practical method of transacting the business. In following up the suggestion last year that "bids had been submitted much lower than the cost of production," I ascertained that some contractors had not been accustomed to pay much attention to the samples adopted by the Joint Committee on Printing; that in many cases, as a necessary consequence, inferior paper was furnished, trusting to the urgent necessities of the office, or a want of proper inspection, to pass it. The details of the new regulations adopted need not be here given. Suffice it to say, that the original samples were tested, and the tensile strength registered upon each. Samples of each delivery are tested in the same manner, and comparisons made in all important particulars with the original sample. I appointed a paper commission, composed of the superintendent of paper, the foreman of printing, the foreman of binding, and the foreman of the press-room, whose duty it is to pass upon every lot of paper, and report the facts to the Public Printer for final action.

The result has been more satisfactory. A number of rejections have been made, but the Public Printer has endeavored to be strictly fair and impartial, and most of the contractors have met the regulations in the proper spirit and fulfilled the requirements of their contracts.

It is safe to say that in the future, contractors will closely examine the samples upon which they bid; and if the same rules and regulations as to inspection are observed, the standard of papers adopted by the Joint Committee on Printing will be maintained, and those who bid upon a fixed grade will be protected in their action to the extent that inferior grades will not be accepted.

In the improvements made during my administration of this office there are none which, in my judgment, will have better results. The inspection calls in the best judgment of some of the most efficient officers in the department, whose action is finally passed upon by the Public Printer. When the magnitude of the expenditure for paper is taken

consideration the necessity for close and impartial inspection and tant attention is clearly apparent.

awarding contracts it is not for the best interests of the Govern- ; to accept proposals from contractors who have furnished inferior r or from those who are without the necessary plant to furnish the ıtity required. The embarrassment of the office is quite as great one cause as the other. At the same time, if the Committee on ting would award the contracts to the lowest bidder for the best ·ests of the Government, taking into consideration the plant and ty to supply the paper promptly, and the official record as to the ment of inferior paper on previous contracts, many of the delays annoyances in executing the public printing would doubtless be ded.

REDUCTION OF ESTIMATES.

reduction of $339,000 in estimates was shown in my last annual re- . This was largely the result of certain improvements (the particulars ıich were then given), and it was suggested that in the following year ıame policy would result in a continued reduction of the expense of ic printing, although the quantity depended upon the action of Con- s. A still further reduction of about $242,000 has been made for lscal year ending June 30, 1887. The estimates for the three years were as follows:

ıl year ending June 30, 1885	$3,014,658 71
ıl year ending June 30, 1886	2,676,107 62
ıl year ending June 30, 1887	2,434,653 68

will be observed that a marked reduction in the amount Congress ɔeen called upon to provide has been made during the past three ɜ, although there has been a constant increase in the quantity of ıing ordered.

RECEIPTS FROM SALES OF WASTE PAPER, ETC.

ırıng the fiscal year ending June 30, 1885, there was received from of documents, Records, waste paper, gold sweepings, &c., the sum .03,621.74, which has been deposited in the Treasury.

APPROPRIATIONS.

e amount appropriated should depend somewhat upon the length e session of Congress. During what is known as the long session, money is required, as the expenditures are necessarily larger. The wing appropriations will indicate what has been heretofore pro- l:

1883, short session	$2,377,650
1884, long session	2,500,000
1885, short session	2,250,000
1886, long session	2,250,000

It will be observed that Congress at its last session made the smallest appropriation in several years, notwithstanding that the annual increase of printing only keeps pace with the growth of the country and the increased business of all Departments of the Government, and the further fact that the first session of the 49th Congress will be a long one. As heretofore stated, I have never asked for an appropriation to meet a deficiency, but have always continued in full operation all departments throughout the year. Anxious to maintain that record, I sent the following to the Senate Committee on Appropriations:

OFFICE OF PUBLIC PRINTER,
Washington, D. C., March 3, 1885.

Hon. W. B. ALLISON,
Chairman Committee on Appropriations, U. S. Senate:

DEAR SIR: Please let me urge the committee to insist upon the $2,500,000 appropriation. If less is appropriated for the long session, in my judgment a deficiency will be necessary. There is plenty of work to be done.

I have never asked for a deficiency, and if the Senate will insist upon its amendments the good record I have endeavored to make will not be broken the coming year.

Very respectfully,

S. P. ROUNDS,
Public Printer.

The House had previously passed the appropriation bill with a reduction of $500,000 as compared with the long session. It occurs to me that the better way would be for Congress to place a check upon its orders for printing (if there is a desire to reduce the expense of printing), rather than to make the orders and then neglect to provide sufficient funds to enable the Public Printer to execute them.

It is yet too early in the new fiscal year to determine as to the necessity for an appropriation to meet a deficiency, but I am still of the opinion that the position then taken was correct, and that such action may be necessary. The Public Printer cannot be expected to keep a force day and night to deliver the large quantity of printing for Congress and issue the daily Congressional Record with an expenditure no larger than is necessary when Congress is not in session and none of these requirements are made upon him. The greatest care and utmost economy has been observed and will be maintained, and it is hoped that it will not be necessary to ask for a deficiency bill, but I deem it my duty to present the facts in my annual report to Congress.

EMPLOYÉS.

The number of employés is regulated by the demands for work upon the office. The average number at the dates mentioned during the four quarters of the fiscal year was as follows:

Number of employés September 30, 1884	2,099
Number of employés December 31, 1884	2,223
Number of employés March 31, 1885	2,223
Number of employés June 30, 1885	2,255

Of this number about 800 are females, and 1,500 are males. The office 'equires 200 laborers, and the remainder of the force consists almost en- irely (aside from the folding and sewing departments) of those who have ;erved a regular apprenticeship, and are thoroughly experienced and ;kilied in their respective trades. The principal expenditure of the office s for labor, and with an average pay-roll of about $5,700 per day it is im- ›ortant that the highest efficiency be maintained among the employés. The Government Printing Office is an immense workshop, and in order to ›e successful the standard required of its employés should only be skill ınd efficiency. Their tenure should not depend upon Congressional or ›ther influence, and as long as they render faithful service they should ›e protected by law. Their usefulness must be impaired if they are con- ;tantly disturbed with the thought that they are subject to furlough or lischarge without cause. There is nothing between them and such a fate but careful, personal supervision of the multitudinous details necessary to provide material with which to keep all employed, and a Public Printer able to withstand the constant pressure for position. The law not only lodges all the appointments with the Public Printer, but the expenditure of over $2,500,000 every year is in his hands.

In the interest of the Government, the present Public Printer has always endeavored to protect the employés fully in their tenure; he has also adopted such regulations as he could to relieve the office of the pressure for place; but that system which takes so much of the time which should be given to the practical details of the important work committed to his charge is wrong, and should be remedied by Congress. Such action would be commendable, and would result in a better public service.

LEAVES OF ABSENCE.

I desire again to renew my recommendation for fifteen days' leave of absence annually for the employés of the Government Printing Office. In speaking upon this subject in previous reports, I said:

"In view of the fact that the clerks in the various Departments, working a less number of hours per day, are entitled to thirty days' leave of absence each year, I submit that as a matter of right and justice to the employés of the Government Printing Office, who have ever been faithful day and night, it would seem proper that at least to some extent the law should be so modified that they too can be favored with a leave of absence. A more faithful and devoted class of employés cannot be found in any Department; and I respectfully call the attention of Congress to this question, and express the hope that some provision may be made for them in the direction indicated."

A bill making a specific appropriation for this purpose (as was done in the case of the letter-carriers of the Post-Office Department) would be an act of justice to those who work more hours for less pay than any other class of Government employés. When unfortunately stricken down by sickness their pay at once ceases, while in almost every other branch of the Government under such circumstances employés continue

to draw their pay. The prompt, efficient, and faithful work of this office advances legislation in a very gratifying degree; and those who, during the session, work extra hours, at the risk of health, and sacrifice of hours that belong to home duties, should receive some recognition that will at least be a step in the direction of justice as between the different classes of Government employés.

Believing that such a deserved and just law would be recognized by a still more efficient service, and, above all, on account of the equity in the request, I earnestly recommend that a special appropriation of $90,000 be made for the purpose of granting the employés of this office fifteen days' leave with pay. This recommendation is made in lieu of any proposed legislation for leave on account of sickness, as it is believed that furloughs granted on that account might result in much abuse of the privilege. Under all the circumstances, in my judgment, fifteen days' annual leave will be more satisfactory. This will be but one-half the time allowed in the various Executive Departments, and I hope this recommendation, so often urged, will be regarded as reasonable, and result in favorable action.

ADDITIONAL ROOM.

The attention of Congress has been repeatedly called to the urgent necessity for additional storage room, not only as a measure of safety, but as imperatively required for the proper execution of the work. In document work hundreds of tons of folded sheets are subjected to hydraulic pressure, tied up, and removed to a leased store room, fully half a mile away. When necessary to collate and bind the books these packages must be hauled back to the main office, involving much additional expense and loss on account of frequent handling and exposure. It cannot be questioned that the expense of the public printing could be materially reduced if a building were provided specially adapted to the wants of the service.

The store-room now leased is entirely too small, and besides it is inconvenient and expensive to be compelled to constantly haul this large quantity of material back and forth. I venture to say that the loss already incurred from such handling would go far towards providing the necessary building, and it is constantly increasing. Another special appropriation for this purpose will be required early in the session.

The honorable Secretary of the Interior says, in his annual report:

"In the Act of March 3, 1885 (sundry civil appropriation act), an appropriation of $15,000 was made—

"'To enable the Public Printer, with the approval of the Secretary of the Interior, to purchase a site in the vicinity of the Public Printing Office, and to erect thereon a store-house for the reception of certain material connected with the Public Printing Office. * * * the store-house to be erected under the supervision of the Architect of the United States Capitol; the cost of the site and the building not to exceed the sum herein appropriated, which may be available from the passage of this act.'

"'The Public Printer submitted for my approval a proposition for the purchase of a site in the rear of the Printing Office, fronting 54 feet on G street, with a depth of 175¼ feet, which he considered the most convenient for the purpose and for which the present owners demanded $8,327.60. Plans, prepared by the Architect of the Capitol, were also submitted for a building of the dimensions of the lot and one story in height to cost $6,600. The Public Printer stated, however, that this building would not provide sufficient relief from the overcrowded condition of the Printing Office. As the appropriation did not seem to be adequate to the purpose intended by Congress, and in view of the express requirement of the appropriation act that the cost of the site and the building should not exceed the sum appropriated, I have felt constrained to withhold my approval, awaiting further action of Congress in the matter."

Hence, nothing has been done towards the new building. The reasons heretofore given are more urgent now than at any previous time, and impel me to urge that a special act be passed appropriating at least $50,000 for the purpose.

CONGRESSIONAL WORK.

While care has been exercised to limit and place within reasonable bounds the amount of printing for the various Executive Departments, no such limitations or safeguards are thrown around printing for Congress. In my opinion thousands of dollars might be saved annually if each House designated a competent practical printer to supervise the printing and edit the copy, with power to strike out superfluous matter, and confine the quantity to the actual needs of the Senate or House respectively. Not unfrequently both the Senate and House will order the same document printed. As copies of all documents and bills are delivered to the Senate and House of Representatives, such duplication is unnecessary and should be corrected. When a document has once been printed the second order is not executed.

During the first session of the Forty-eighth Congress, from the 1st to the 7th day of July, 1884, there were ordered printed for the Senate 206 bills and joint resolutions, 7 executive documents, 12 miscellaneous documents, and 81 reports of committees. For the House there were ordered printed 180 bills and joint resolutions, 5 executive documents, 16 miscellaneous documents, and 132 reports of committees.

During the second session of the Forty-eighth Congress there were ordered printed for the Senate 1,499 bills and joint resolutions, 106 executive documents, 72 miscellaneous documents, 677 reports of committees, 18 resolutions, and 32 confidential documents. For the House there were ordered printed 1,177 bills and joint resolutions, 269 executive documents, 42 miscellaneous documents, 531 reports of committees, and 24 resolutions.

During the special session of the Senate of the Forty-ninth Congress

there were ordered printed 2 executive documents, 25 miscellaneous documents, and 1 committee report.

LAWS RELATING TO PRINTING.

Many of the laws relating to the public printing were passed before the establishment of the Government Printing Office. These acts should be repealed, others amended, and a new code adopted for the proper discharge of the trust committed to the care of the Public Printer. Important questions frequently arise, which are now left to his discretion without providing a method by which he can obtain legal advice. There should be a statute regulating all these matters, and it is hoped Congress will revise the various laws relating to the public printing and binding.

IMPROVEMENTS.

Some of the more prominent improvements made in the past three years are:

Fixed pay-days for all the employés, and regulations calculated to reduce to the minimum any loss of time during the three pay-days in each month.

Regulations which abolished deficiency bills, filled empty warehouses, and prevented long furloughs and necessary suspension of work.

Substitution, so far as possible from regular appropriations, of modern machinery of largely increased capacity for such as was slow, old-fashioned, and badly worn, thereby largely increasing the product of the office, at no greater operating expense. The estimated saving on press-work the first year after the change was $78,000.

Requiring an estimate in writing for all lithographing and engraving, under the limit, which estimate is examined and approved by the Public Printer before an order is given for the execution of work. Written contracts, with sufficient bonds, for all work exceeding the limit.

A more comprehensive system of accounts, whereby a perfect record is made of every transaction. By opening new books and adopting an improved system of auditing, checks, and counter-checks, there is not a single transaction that is not fully shown, and there is a voucher for every item. These books, vouchers, and accounts, speak for themselves, and have at all times been open to the inspection of Congress or others interested.

A new fire apparatus has been provided. New fire-escapes have been put in, and means furnished whereby the employés can speedily and safely leave the building in an emergency. New floors have been laid and the buildings generally put in good condition; new water-closets have been built throughout, and strict sanitary rules enforced—all of which have added very materially to the general health of the employés of the office.

Changing from day-work to piece-work, as far as possible, so that employés receive pay only for work done. This action effected a saving of $20,000 in one small department the first year.

A new web press has been put in, which will result in the prompt printing of the Agricultural Report. The last edition numbered 400,000 copies.

A new web press has been purchased for the Record out of savings from the regular appropriation. This press will print and fold the complete edition within one hour, and takes the place of a number of drum-cylinder presses, and saves the labor of those formerly running these presses and folding the sheets.

An immense quantity (150,000 volumes) of unfinished work has been completed in addition to the usual current work, the particulars of which can be found in the annual reports. This work had been accumulating for years.

A marked change as to the inspection and acceptance of paper, which is calculated to bring the various papers up to the proper standard.

Large reduction of estimates, by reason of improvements made, which will be more marked in the future, unless the volume of work is increased.

Introduction of electric lights, making quite a saving in expense for gas, and producing a far superior light.

Current work for Departments is delivered with promptness. Where delays have occurred they were caused by the failure of the contractor to furnish the paper necessary for the work.

A commission has been appointed to examine lithographic work, whose duty it is to see that it is equal to the proofs previously submitted to and approved by the heads of Bureaus interested.

A large number of improvements have been made, of a minor character, which have suggested themselves to the eye of a practical printer, each small in itself, but quite large in the aggregate, and tending to a more economical management.

CONFIDENTIAL PRINTING, CONCLUSION, ETC.

More confidential work was done during the year than at any previous time within the history of the office, and there was not a single complaint of premature publication.

In concluding the report which gives in detail the business of this office during the third year of my administration, I feel that acknowledgments should be made to my own immediate assistants, the Chief Clerk, Foreman of Printing, and Foreman of Binding, together with others filling positions of responsibility, all of whom aided by the earnest and faithful work of the employés at large, have made possible the improvements in the office and in the system of doing its business, as well as the favorable record it enjoys.

It is also both just and true to say that in a life-long and extensive prosecution of the printing and binding business, I have never yet seen

in any body of employés so high an average of skill or a greater devotion to a faithful and thorough discharge of their duties, and which is certainly not excelled, if equaled, by any other body of Government employés.

I cannot, in a report, speak of the reforms inaugurated, calculated to more thoroughly systematize the business, which at best is vexatious and almost unlimited in its details. Suffice it to say, that the office has a reputation with those whose duty it is to examine the accounts that is second to none in the Government. These accounts, aggregating over ten million dollars since my induction into office, have been audited, examined, and approved by the proper accounting-officers of the Treasury, without an error, or the withholding of a single one because it was not a proper lawful expenditure. The foregoing figures and facts make up a record highly creditable to the clerical force, and which I take pleasure in laying before Congress.

S. P. ROUNDS,
Public Printer.

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No. 1.—*Statement showing the estimated cost of printing, binding, &c., documents printed by authority of law, joint or concurrent resolutions, or by order of either house of Congress, during the fiscal year ending June* 30, 1885, *and how distributed.*

[Of the number of copies printed, those marked (*) embrace the usual or regular number (1,900 copies), which are not included in the general distribution of the public documents.]

Title of document.	By what authority printed.	Number of pages.	Number of copies.	Cost of lithographing and engraving.	Cost of composition, stereotyping, press-work, folding, inserting plates, &c.	Cost of paper.	Cost of binding.	Total cost.	How distributed.
PRINTED BY AUTHORITY OF LAW, JOINT OR CONCURRENT RESOLUTIONS.									
Report of the Secretary of the Interior—Report of the Commissioner of Education for 1882 (H. Ex. Doc. No. 1, part 5, vol. 4, 2d session 47th Congress).	Sec. 3798 R. S. and joint resolution of June 20, 1884.	1,166	*42,900	.....	$14,837 58	$14,058 14	$8,200 00	$37,095 72	7,000 Senate, 14,000 House, and 20,000 Commissioner of Education.
Message of the President and Foreign Relations, 1883 (H. Ex. Doc. No. 1, part 1, 1st session 48th Congress).	Sec. 3798 R. S	1,018	*7,900	.....	3,264 85	1,885 40	1,200 00	6,350 25	2,000 Senate, 4,000 House.
Report of the Secretary of War, 1883 (H. Ex. Doc. No. 1, part 2, vol. 1, 1st session 48th Congress).	.....do	740	*4,900	359 62	2,885 40	1,038 58	540 00	4, 23 60	1,000 Senate, 2,000 House.
Report of the Secretary of War, 1883—Report Chief of Engineers (H. Ex. Doc. No. 1, part 2, vol. 2, part 1, 1st session 48th Congress).	.....do	1,064	*4,900						
Report of the Secretary of War, 1883—Report Chief of Engineers (H. Ex. Doc. No. 1, part 2, vol. 2, part 2, 1st session 48th Congress.	.....do	932	*4,900	1,245 62	11,485 64	4,605 72	3,654 00	20,990 98	1,000 Senate, 2,000 House.
Report of the Secretary of War, 1883—Report Chief of Engineers (H. Ex. Doc. No. 1, part 2, vol. 2, part 3, 1st session 48th Congress).	.....do	472	*4,900						
Report of the Secretary of War, 1883—Report Chief of Ordnance (H. Ex. Doc. No. 1, part 2, vol. 3, 1st session 48th Congress).	.....do	502	*4,900	1,093 10	3,673 51	1,157 44	750 00	6,674 05	1,000 Senate, 2,000 House.
Report of the Secretary of War, 1883—Report Chief Signal Officer (H. Ex. Doc. No. 1, part 2, vol. 4, 1st session 48th Congress).	.....do	1,174	*4,900	1,065 00	8,531 14	1,798 00	750 00	12,144 14	Do.

48th Congress).									
Report of the Secretary of War, 1884—Report Chief of Engineers (H. Ex. Doc. No. 1, part 2, vol. 2, part 1, 2d session 48th Congress).	do	906	*4,900						
Report of the Secretary of War, 1884—Report Chief of Engineers (H. Ex. Doc. No. 1, part 2, vol. 2, part 2, 2d session 48th Congress).	do	666	*4,900	1,128 00	16,601 33	5,589 88	3,610 00	26,929 21	Do.
Report of the Secretary of War, 1884—Report Chief of Engineers (H. Ex. Doc. No. 1, part 2, vol. 2, part 3, 2d session 48th Congress).	do	898	*4,900						
Report of the Secretary of War, 1884—Report Chief of Engineers (H. Ex. Doc. No. 1, part 2, vol. 2, part 4, 2d session 48th Congress).	do	520	*4,900						
Report of the Secretary of War, 1884—Report Chief Signal Officer (H. Ex. Doc. No. 1, part 2, vol. 4, 2d session 48th Congress.)	do	720	*4,900	231 74	4,837 56	873,98	750 00	6,693 28	Do.
Report of the Secretary of the Navy, 1884 (H. Ex. Doc. No. 1, part 3, vol. 1, 2d session 48th Congress).	do	558	*4,900	548 54	2,325 23	771 04	750 00	4,394 81	Do.
Report of the Secretary of the Navy, 1884—Report Surgeon-General (H. Ex. Doc. No. 1, part 3, vol. 2, 2d session, 48th Congress).	do	378	*4,900	99 86	1,832 25	487 53	480 00	2,899 64	Do.
Report of the Postmaster-General, 1884 (H. Ex. Doc. No. 1, part 4, 2d session 48th Congress).	do	776	*4,900	.....	4,410 32	773 08	480 00	5,663 40	Do.
Report of the Secretary of the Interior, 1884—Report of Commissioner of Pensions, Commissioner of the Land Office, and Auditor of Railroad Accounts (H. Ex. Doc. No. 1, part 5, vol. 1, 2d session 48th Congress).	do	624	*4,900	1,056 00	3,174 75	667 09	600 00	5,497 84	Do.
Report of the Secretary of the Interior, 1884—Report of Commissioner of Indian Affairs (H. Ex. Doc. No. 1, part 5, vol. 2, 2d session 48th Congress).	do	570	*4,900	400 00	2,871 80	640 09	480 00	4,391 89	Do.
Report of the Secretary of the Treasury, 1884—Finance Report (H. Ex. Doc. No. 2, 2d session 48th Congress).	do	692	*4,900	.....	3,549 54	690 43	540 00	4,779 97	Do.

No. 1.—*Statement showing the estimated cost of printing, binding, &c.*—Continued.

Title of document.	By what authority printed.	Number of pages.	Number of copies.	Cost of lithographing and engraving.	Cost of composition, stereotyping, press-work, folding, inserting plates, &c.	Cost of paper.	Cost of binding.	Total cost.	How distributed.
PRINTED BY AUTHORITY OF LAW, &c.—Con'd.									
Report of the Secretary of the Treasury, 1884—Commerce and Navigation of the United States (H. Ex. Doc. No. 7, part 1, 2d session 48th Congress).	Sec. 3798 R. S. and joint resolution of June 20, 1884.	1,164	*10,050	.....	$9,269 33	$2,376 57	$1,630 00	$13,275 90	2,000 Senate, 6,150 House.
Report of the Attorney-General, 1884 (H. Ex. Doc. No. 12, 2d session 48th Congress).	.....do	170	*4,900	$6 00	739 98	176 69	420 00	1,342 67	1,000 Senate, 2,000 House.
Commercial Relations, 1882-'83 (H. Ex. Doc. No. 176, vol. 1, 1st session 48th Congress).	.....do	792	*6,900	.....	4,295 28	1,284 48	1,000 00	6,579 76	2,000 Senate, 3,000 House.
Commercial Relations, 1882-'83 (H. Ex. Doc. No. 176, vol. 2, 1st session 48th Congress).	.....do	870	*6,900	.....	4,791 01	1,409 19	1,000 00	7,200 20	Do.
Report of the Director of the Mint on the Production of Precious Metals in the United States, 1883 (H. Ex. Doc. No. 177, 1st session 48th Congress).	Sec. 3792 R. S., and concurrent resolution June 25, 1884.	858	*10,900	353 00	3,653 38	1,880 71	1,684 00	7,571 09	2,000 Senate, 4,000 House, 3,000 Director of the Mint.
Report of the Director of the Mint on the Production of Precious Metals in the United States, 1884 (H. Ex. Doc. No. 268, 2d session 48th Congress).	Sec. 3792 R. S., and concurrent resolution Mar. 2, 1885.	644	*10,900	510 00	2,902 45	1,603 28	1,579 50	6,595 23	Do.
Labor in Europe, Letter of Secretary of State on.	Sec. 3792 R. S., and concurrent resolution Jan. 21, 1885.	196	10,000	.....	424 80	409 71	40 00	874 51	1,500 Senate, 2,500 House, 6,000 Department of State.
Labor in Europe (H. Ex. Doc. No. 54, vol. 1, 2d session 48th Congress).	.....do	886	*9,900	85 00	4,654 76	1,795 45	1,440 00	7,975 21	1,500 Senate, 2,500 House, 4,000 Department of State.
Labor in Europe (H. Ex. Doc. No. 54, vol. 2, 2d session 48th Congress).	.....do	878	*9,900	12 00	4,981 69	1,770 79	1,440 00	8,204 48	Do.
Labor in Europe (H. Ex. Doc. No. 54, vol. 3, 2d session 48th Congress).	.....do	436	*9,900	.....	2,401 58	891 92	1,440 00	4,733 50	Do.

(S. Ex. Doc. No. 29, 1st session 48th Congress).	tion Mar. 28, 1884.								vey.
Memoirs of the National Academy of Sciences, 1883 (S. Mis. Doc. No. 110, 1st session 48th Congress).	Sec. 3792 R. S., and concurrent resolution Apr. 28, 1884.	204	*6,400	2,100 27	2,082 49	1,731 01	370 00	6,283 77	1,000 Senate, 2,000 House, 1,500 Academy of Sciences.
Report of the National Academy of Sciences, 1884 (S. Mis. Doc. No. 68, 2d session 48th Congress).	Sec. 3792 R. S., and concurrent resolution Feb. 28, 1885.	72	*6,400	.....	218 97	102 77	13 50	335 24	Do.
Memoirs of the National Academy of Sciences, 1884 (S. Mis. Doc. No. 69, 2d session 48th Congress).	.....do	112	*6,400	777 00	611 07	513 15	240 00	2,141 22	Do.
Report of the Commissioner of Fish and Fisheries, 1882 (S. Mis. Doc. No. 46, 2d session 47th Congress).	Sec. 3792 R. S., and concurrent resolution Mar. 3, 1883.	1,194	*11,425	408 50	6,624 60	3,083 64	1,885 00	12,001 74	2,000 Senate, 6,000 House, 1,500 Fish Commission, 25 for sale by Public Printer.
Report and Proceedings of the Commission for Dedication of the Washington Monument (S. Mis. Doc. No. 56. 2d session 48th Congress).	Sec. 3792 R. S., and act of Mar. 3, 1885.	122	*28,400	45 60	1,995 20	1,458 13	6,095 00	9,593 93	8,000 Senate, 16,000 House, 500 General Sheridan, 500 Monument Association, 500 Colonel Casey, 500 Hon. R. C. Winthrop, 500 Hon. J. W. Daniel.
Astronomical and Meteorological Observations, 1881 (S. Mis. Doc. No. 71, 2d session 48th Congress).	Sec. 3792 R. S., and concurrent resolution Mar. 2, 1885.	366	*3,900	.....	2,823 72	670 70	600 00	4,094 42	400 Senate, 800 House, 800 Navy Department.
Congressional Directory, 3d edition (S. Mis. Doc. No. 27, part 3, 1st session 48th Congress).	Sec. 3801 R. S	200	*13,900	130 00	670 37	747 72	240 00	1,788 09	For the Committee on Printing.
Congressional Directory, 1st edition (S. Mis. Doc. No. 14, part 1, 2d session 48th Congress).	.....do	200	*14,900	105 00	972 31	667 26	253 60	1,998 17	Do.
Congressional Directory, 2d edition (S. Mis. Doc. No. 14, part 2, 2d session 48th Congress).	.....do	212	*15,400	105 00	945 85	714 55	261 48	2,026 88	Do.
Eulogies on the late Hon. D. C. Haskell (H. Mis. Doc. No. 46, 1st session 48th Congress).	Sec. 3792 R. S., and joint resolution Mar. 13, 1884.	80	*14,400	38 00	506 94	549 23	3,000 00	4,094 17	3,000 Senate, 9,500 House.
Eulogies on the late Hon. Thomas Allen (H. Mis. Doc. No. 47, 1st session 48th Congress).	Sec. 3792 R. S., and act of Apr. 10, 1884.	52	*13,900	38 00	325 26	370 57	2,880 00	3,613 83	4,000 Senate, 8,000 House.
Eulogies on the late Hon. Thomas Herndon (H. Mis. Doc. No. 53, 1st session 48th Congress).	Sec. 3792 R. S., and joint resolution May 3, 1884.	72	*14,400	46 89	487 47	500 03	3,000 00	4,033 89	3,000 Senate, 9,500 House.

No. 1.—*Statement showing the estimated cost of printing, binding, &c.*—Continued.

Title of document.	By what authority printed.	Number of pages.	Number of copies.	Cost of lithographing and engraving.	Cost of composition, stereotyping, press-work, folding, inserting plates, &c.	Cost of paper.	Cost of binding.	Total cost.	How distributed.
PRINTED BY AUTHORITY OF LAW, &C.—Con'd									
Annual Report of the Smithsonian Institution, 1883 (H. Mis. Doc. No. 69, 1st session 48th Congress).	Sec. 3792 R. S., and concurrent resolution June 24, 1884.	998	*17,960	$230 00	$5,012 17	$3,666 35	$3,212 00	$12,120 52	3,000 Senate, 6,060 House, 7,000 Smithsonian Institution.
Bulletin of the United States Fish Commission, vol. 4, 1884 (H. Mis. Doc. No. 6, 2d session 48th Congress).	Sec. 3792 R. S., and joint resolution Feb. 14, 1884.	500	*6,900	.....	1,675 48	715 39	800 00	3,190 87	1,000 Senate, 2,500 House, 1,500 Fish Commission.
Digest of the Opinions of the Attorney-General (H. Mis. Doc. No. 15, 2d session 48th Congress).	Sec. 3792 R. S., and sec. 21, Stat. at Large, June 15, 1880.	510	*2,900	.....	1,491 37	525 20	750 00	2,766 57	1,000 Department of Justice.
Decisions of the First Comptroller of the Treasury, vol. 5 (H. Mis. Doc. No. 22, 2d session 48th Congress).	Sec. 3792 R. S., and joint resolution Aug. 2, 1882.	630	*9,417	.....	2,047 97	1,219 23	6,389 45	9,656 65	See Stat. at Large, vol. 22, page 391.
War on the Pacific Coast of South America, &c. (H. Mis. Doc. No. 30, 2d session 48th Congress).	Sec. 3792 R. S., and joint resolution Mar. 3, 1885.	80	*6,400	669 00	245 86	141 10	13 50	1,069 46	1,000 Senate, 2,000 House, 1,500 Navy Department.
Operations of the French Navy during recent war with Tunis (H. Mis. Doc. No. 31, 2d session 48th Congress).	.....do	32	*6,400	.....	98 05	51 27	13 50	162 82	Do.
American Ephemeries and Nautical Almanac, 1888 (H. Mis. Doc., No. 33, 2d session 48th Congress).	Sec. 3792 R. S., and joint resolution Feb. 11, 1880.	536	*3,400	166 50	3,142 78	721 18	375 00	4,405 46	100 Senate, 400 House, 1,000 Navy Department.
Hayden's Final Reports, vol. 3—Cope (H. Mis. Doc. No. 60, 1st session 48th Congress).	Sec. 3792 R. S., and concurrent resolutions of Jan. 25, 1879, and Mar. 20, 1880.	1,046	*6,100	46,035 50	7,138 84	5,341 03	4,074 00	62,589 07	750 Senate, 1,500 House, 1,575 Interior Department, 375 Survey.
Hayden's Final Reports, vol. 8—Lesquereux (H. Mis. Doc. No. 70, 1st session 48th Congress).	.....do	296	*6,100	25,226 00	1,812 33	1,747 61	1,890 00	30,675 94	Do.
Contributions to North American Ethnology, vol. 10.	Concurrent resolution Mar. 2, 1881.	1,176	100	.....	3,942 53	92 91	75 00	4,110 44	100 Bureau of Ethnology.

Flora of Virginia, vol. 3—Pursh (H. Mis. Doc. No. 43, 1st session 47th Congress).	Sec. 3792 R. S., and act of Mar. 3, 1879.	156	*4,900	1,150 00	1,805 40	1,224 84	1,350 00	5,530 24	3,000 Geological Survey.
Silver Lead Deposits of Eureka, Nevada, vol. 7—Curtis (H. Mis. Doc. No. 72, 1st session 47th Congress).	.....do	214	*4,900	1,892 50	925 65	996 74	1,350 00	5,164 89	Do.
Paleontology of the Eureka District, Nevada, vol. 8—Walcott (H. Mis. Doc. No. 73, 1st session 47th Congress).	.....do	312	*4,900	5,535 00	1,489 33	1,371 23	1,350 00	9,745 56	Do.
National Home for Disabled Volunteer Soldiers (H. Rep. No. 2676, 2d session 48th Congress).	Sec. 3792 R. S., and joint resolution Mar. 3, 1885.	708	*6,900	.....	2,544 03	991 99	500 00	4,036 02	1,000 Senate, 4,000 House.
Report on erection of statue to John Marshall.	Joint resolution, June 11, 1884.	96	10,550	.....	448 37	705 08	2,532 00	3,685 45	3,500 Senate, 7,000 House, 50 Library of Congress.
Report of the National Board of Health, 1880.	Joint resolution July 5, 1884.	650	1,000	675 00	284 16	249 37	300 00	1,508 53	1,000 National Board of Health.
Report of the National Board of Health, 1882.	.....do	672	1,000	370 00	579 65	338 54	400 00	1,688 19	Do.
Report of the National Board of Health, 1883 (H. Ex. Doc. No. 43, 1st session 48th Congress).	..... do	226	*2,900	395 00	754 66	225 39	200 00	1,575 05	Do.
Report of the National Board of Health, 1884, (H. Ex. Doc. No. 176, 2d session 48th Congress.)	.....do	26	1,000	.....	11 45	7 72	3 00	22 17	Do.
French Spoliation Claims (S. Ex. Doc. No. 205, 1st session 48th Congress).	Concurrent resolution Mar. 2, 1885.	276	3,000	.....	707 85	173 08	18 00	898 93	1,000 Senate, 2,000 House.
Seal Islands of Alaska (from vol. 8, 10th census).	Concurrent resolution Aug. 7, 1882.	190	1,500	.....	232 98	159 13	90 00	482 11	1,500 Fish Commission.
Report of the Health Officer of the District of Columbia, 1884.	Act of Feb. 26, 1885...	178	2,500	455 00	140 50	134 92	400 00	1,130 42	100 Senate, 350 House, 2,050 Health Officer.
House Journal, 1st session 48th Congress.	Secs. 3792, 3798, and 3799 R. S.	2,304	3,128	.....	6,976 89	1,676 78	1,841 45	10 495 12	1,550 Interior Department.
House Journal, 2d session 48th Congress...	.....do	1,002	3,128	.....	3,070 44	635 24	1,391 85	5,097 53	Do.
Senate Journal, 2d session 48th Congress..	.....do	800	3,194	.....	1,627 39	518 77	1,324 50	3,470 66	Do.
Pamphlet Laws, 1st session 48th Congress.	Sec. 3807 and act of June 20, 1874.	560	300	.....	114 95	83 86	30 00	228 81	300 Department of State.
Pamphlet Laws, 2d session 48th Congress..	.....do	450	26,691	.....	4,135 56	6,004 94	2,135 28	12,275 78	3,000 Senate, 10,000 House, 13,691 Department of State.
Statutes at Large of the 47th Congress, vol. 22.	Acts of June 20, 1874, and March 3, 1883.	1,178	600	.....	334 42	353 13	660 00	1,347 55	600 Department of State.
Statutes at Large of the 48th Congress, vol. 23.	.....do	974	4,030	.....	1,571 28	1,966 45	4,433 00	7,970 73	3,980 Department of State, 50 Library of Congress.

No. 1.—*Statement showing the estimated cost of printing, binding, &c.*—Continued.

Title of document.	By what authority printed.	Number of pages.	Number of copies.	Cost of lithographing and engraving.	Cost of composition, stereotyping, press-work, folding, inserting plates, &c.	Cost of paper.	Cost of binding.	Total cost.	How distributed.
PRINTED BY AUTHORITY OF LAW, &C.—Con'd.									
Bulletin No. 8 of the United States Geological Survey.	Joint resolution Mar. 3, 1879.	56	3,000	$1,195 00	$225 05	$99 89	$9 00	$1,528 94	3,000 Geological Survey.
Bulletin No. 9 of the United States Geological Survey.	.....do.....	42	3,000	.....	190 07	30 18	9 00	229 25	Do.
Bulletin No. 10 of the United States Geological Survey.	.....do.....	74	3,000	1,195 00	230 15	110 53	9 00	1,544 68	Do.
Bulletin No. 11 of the United States Geological Survey.	.....do.....	66	3,000	311 50	242 80	57 31	9 00	620 61	Do.
Bulletin No. 12 of the United States Geological Survey.	.....do.....	34	3,000	198 00	119 59	28 74	9 00	355 33	Do.
Bulletin No. 13 of the United States Geological Survey.	.....do.....	136	3,000	.....	363 70	86 90	9 00	459 60	Do.
Bulletin No. 14 of the United States Geological Survey.	.....do.....	244	3,000	196 00	776 95	156 13	15 00	1,144 08	Do.
Bulletin No. 15 of the United States Geological Survey.	.....do.....	38	3,000	.....	99 75	27 78	9 00	136 53	Do.
Bulletin No. 16 of the United States Geological Survey.	.....do.....	90	3,000	495 00	257 80	87 10	9 00	848 90	Do.
Bulletin No. 17 of the United States Geological Survey.	.....do.....	52	3,000	.....	131 70	36 20	9 00	176 90	Do.
Bulletin No. 18 of the United States Geological Survey.	.....do.....	30	3,000	88 98	95 90	74 24	9 00	268 12	Do.
Bulletin No. 19 of the United States Geological Survey.	.....do.....	32	3,000	.....	78 45	24 16	9 00	111 61	Do.
Bulletin No. 20 of the United States Geological Survey.	.....do.....	118	3,000	120 00	330 89	83 14	9 00	543 03	Do.
Bulletin No. 21 of the United States Geological Survey.	.....do.....	20	3,000	338 50	109 10	61 95	9 00	518 55	Do.

States Geological Survey (H. Ex. Doc. No. 1, part 5, vol. 3, 1st session 48th Congress).									vey.
Pacific Coasters' Nautical Almanac	Joint resolution Feb. 11, 1880.	98	1,000		356 05	45 08	50 00	451 13	1,000 Navy Department.
Atlantic Coasters' Nautical Almanac	do	162	2,500		766 95	171 32	150 00	1,088 27	2,500 Navy Department.
American Nautical Almanac, 1883 (first edition.	do	280	1,000		125 20	124 80	60 00	310 00	1,000 Navy Department.
Astronomical Papers of American Ephemeris, vol. 2, part 1.	do	48	1,000		29 75	40 77	30 00	100 52	Do.
Astronomical Papers of American Ephemeris, vol. 2, part 2.	do	58	1,000		36 70	48 55	30 00	115 25	Do.
Astronomical Papers of American Ephemeris, vol. 2, parts 3 and 4.	do	152	1,000		82 80	121 21	30 00	234 01	Do.
Astronomical Papers of American Ephemeris, vol. 3, part 1.	do	200	1,000		111 45	158 78	30 00	300 23	Do.
Astronomical Papers of American Ephemeris, vol. 3, part 2.	do	144	1,000		79 85	115 39	5 00	200 15	Do.
Astronomical Papers of American Ephemeris, vol. 3, part 3.	do	28	1,000		20 85	25 07	4 00	49 92	Do.
Public resolutions, 1st session 48th Congress, Nos. 39 to 44, inclusive (1,550 each, regular number).	Sec. 3805, R. S	12	10,500		19 82	4 26		24 08	200 each for Department of State.
Public acts, 1st session 48th Congress, Nos. 74 to 89, 91 to 108, inclusive, and 112 and 113 (1,550 each, regular number).	do	180	64,750		288 61	63 37		351 98	Do.
Public acts, 1st session 48th Congress, Nos. 109, 110, and 111 (1,550 each, regular number).	do	90	6,150		159 74	37 08		196 82	500 each for Department of State.
Private acts, 1st session 48th Congress, Nos. 61 to 252, inclusive (1,550 each, regular number).	do	422	336,000		447 49	148 37		595 86	200 each for Department of State.
Agreement between the United States and Siam, 1st session 48th Congress (1,550, regular number).	do	4	1,750		8 74	1 41		10 15	Do.
International Money-Order Conventions, 1st session 48th Congress (1,550 each, regular number).	do	66	7,400		316 24	60 24		376 48	300 each for Post-Office Department.

No. 1.—*Statement showing the estimated cost of printing, binding, &c.*—Continued.

Title of document.	By what authority printed.	Number of pages.	Number of copies.	Cost of lithographing and engraving.	Cost of composition, stereotyping, presswork, folding, inserting plates, &c.	Cost of paper.	Cost of binding.	Total cost.	How distributed.
PRINTED BY AUTHORITY OF LAW, &c.—Con'd.									
Conventions, &c., 1st session 48th Congress (1,550 each, regular number).	Sec. 3805, R. S	28	8,200		$58 66	$11 57		$70 23	500 each for Department of State.
Public resolutions, 2d session 48th Congress, Nos. 1 to 21, inclusive (1,550 each, regular number).	do	42	36,750		64 10	14 97		79 07	200 each for Department of State.
Public acts, 2d session 48th Congress, Nos. 1 to 12, 14 to 46, 48 to 51, 53 to 85, 87, 91 to 99, 101 to 104, inclusive (1,550 each, regular number).	do	252	168,000		397 15	90 77		487 92	Do.
Public acts, 2d session 48th Congress, Nos. 13, 47, 52, 86 to 90, inclusive, 100, 105, and 106 (1,550 each, regular number).	do	156	20,500		327 20	64 31		391 51	500 each for Department of State.
Private resolutions, 2d session 48th Congress, Nos. 1, 2, and 3 (1,550 each, regular number).	do	6	5,250		12 54	2 16		14 70	200 each for Department of State.
Private acts, 2d session 48th Congress, Nos. 1 to 426, inclusive (1,550 each, regular number).	do	852	745,500		797 53	303 93		1,101 46	Do.
Treaties, conventions, &c., 2d session 48th Congress (1,550 each, regular number).	do	30	8,200		71 00	12 41		83 41	500 each for Department of State.
Total cost of printing, binding, &c., done by authority of law, joint or concurrent resolution.		47,294	2,025,723	$104,108 22	218,666 31	104,980 52	$101,652 61	529,407 66	
PRINTED BY ORDER OF THE SENATE.									
2d session 48th Congress.									
New system of naval defense	Resolution Jan. 18, 1882	30	100		41 64	63		42 27	Committee on Naval Affairs.

Letters from the Secretary of the Treasury and Commissioner of Internal Revenue.	Resolution Apr. 21, 1882	16	50	.....	12 50	19	.....	12 69	Committee on Finance.
Journal of Committee of Fifteen, appointed December, 1865.	Resolution Feb. 26, 1884	50	6,000	.....	139 48	69 52	.....	209 00	2,000 Senate, 4,000 House.
Message of the President relative to claims of citizens of the United States against France.	Resolution July 5, 1884	278	3,000	.....	171 80	172 39	12 00	356 19	Senate.
Senate Manual	do	484	900	.....	1,095 95	169 15	5 00	1,270 10	850 Senate, 50 Library of Congress.
House Bill No. 566 and Senate Mis. Doc. No. 107, 1st session, in pamphlet form.	Resolution July 6, 1884	16	2,000	.....	24 71	6 43	.....	31 14	Senate.
Message of the President and reports proper of the heads of Executive Departments.	Resolution Dec. 4, 1884	284	1,900	.....	128 92	114 62	19 00	262 54	Do.
Commercial Reciprocity Treaty between the United States and Spain.	Resolution Dec. 10, 1884	24	2,000	.....	18 90	9 65	.....	28 55	Do.
Senate Ex. Docs. No. 112, 2d session 46th, No. 194, 1st session 47th, and No. 26, 1st session 48th Congresses.	Resolution Jan. 13, 1885	368	500	.....	629 22	36 98	.....	666 20	Do.
Senate Bill No. 1820	Resolution Jan. 20, 1885	6	1,000	.....	9 57	3 95	.....	13 52	Do.
Evidence taken by Committee on Indian Affairs.	Resolution Jan. 24, 1885	770	50	35 00	1,617 04	18 36	.....	1,670 40	Committee on Indian Affairs.
House Bill No. 6771	Resolution Jan. 28, 1885	18	1,000	.....	34 90	3 31	.....	38 21	Senate.
Foreign telegraphic cables upon the shores of the United States.	Resolution Feb. 13, 1885	32	1,000	.....	13 75	8 10	3 00	24 85	Department of State.
Report of the Librarian of Congress	Resolution Feb. 25, 1885	8	500	.....	5 45	1 67	3 00	10 12	Librarian of Congress.
Public Act No. 13	Resolution Mar. 2, 1885	2	1,000	.....	1 65	41	.....	2 06	Senate.
Appropriation Laws	Resolution Mar. 9, 1885	234	30	.....	9 32	1 41	.....	10 73	Committee on Appropriations.
EXECUTIVE DOCUMENTS (OF WHICH ONLY THE USUAL NUMBER, 1,900, WERE PRINTED).									
First session 48th Congress	Sec. 3792 R. S.	870	21,200	1,162 85	1,841 07	503 70	.....	3,507 62	See table on page 119.
Second session 48th Congress	do	2,000	217,600	2,588 92	6,616 21	1,032 73	.....	10,237 86	Do.
Special session 49th Congress	do	82	3,800	.....	187 90	31 33	.....	219 23	Do.
MISCELLANEOUS DOCUMENTS (OF WHICH ONLY THE USUAL NUMBER, 1900, WERE PRINTED).									
First session 48th Congress	do	46	19,100	.....	135 16	18 02	.....	153 18	Do.
Second session 48th Congress	do	492	122,700	.....	2,043 85	191 34	.....	2,235 19	Do.

No. 1.—*Statement showing the estimated cost of printing, binding, &c.*—Continued.

Title of document.	By what authority printed.	Number of pages.	Number of copies.	Cost of lithographing and engraving.	Cost of composition, stereotyping, presswork, folding, inserting plates, &c.	Cost of paper.	Cost of binding.	Total cost.	How distributed.
PRINTED BY AUTHORITY OF LAW, &C.—Con'd.									
Conventions, &c., 1st session 48th Congress (1,550 each, regular number).	Sec. 3805, R. S	28	8,200	.....	$58 66	$11 57	.....	$70 23	500 each for Department of State.
Public resolutions, 2d session 48th Congress, Nos. 1 to 21, inclusive (1,550 each, regular number).	.....do	42	36,750	.....	64 10	14 97	.....	79 07	200 each for Department of State.
Public acts, 2d session 48th Congress, Nos. 1 to 12, 14 to 46, 48 to 51, 53 to 85, 87, 91 to 99, 101 to 104, inclusive (1,550 each, regular number).	.....do	252	168,000	.....	397 15	90 77	.....	487 92	Do.
Public acts, 2d session 48th Congress, Nos. 13, 47, 52, 86 to 90, inclusive, 100, 105, and 106 (1,550 each, regular number).	.....do	156	20,500	.....	327 20	64 31	.....	391 51	500 each for Department of State.
Private resolutions, 2d session 48th Congress, Nos. 1, 2, and 3 (1,550 each, regular number).	.....do	6	5,250	.....	12 54	2 16	.....	14 70	200 each for Department of State.
Private acts, 2d session 48th Congress, Nos. 1 to 426, inclusive (1,550 each, regular number).	.....do	852	745,500	.....	797 53	303 93	.....	1,101 46	Do.
Treaties, conventions, &c., 2d session 48th Congress (1,550 each, regular number).	.....do	30	8,200	.....	71 00	12 41	.....	83 41	500 each for Department of State.
Total cost of printing, binding, &c., done by authority of law, joint or concurrent resolution.	.....	47,294	2,025,723	$104,108 22	218,666 31	104,960 52	$101,652 61	529,407 66	
PRINTED BY ORDER OF THE SENATE.									
2d session 48th Congress.									
New system of naval defense	Resolution Jan. 18, 1882	30	100	.....	41 64	63	.....	42 27	Committee on Naval Affairs.

Journal of Committee of Fifteen, appointed December, 1865.	Resolution Feb. 26, 1864	50	6,000	.....	159 48	50 52	.....	209 00	2,000 Senate, 4,000 House.
Message of the President relative to claims of citizens of the United States against France.	Resolution July 5, 1884	278	3,000	.....	171 80	172 39	12 00	356 19	Senate.
Senate Manual	do	484	900	.....	1,095 95	169 15	5 00	1,270 10	850 Senate, 50 Library of Congress.
House Bill No. 566 and Senate Mis. Doc. No. 107, 1st session, in pamphlet form.	Resolution July 6, 1884	16	2,000	.....	24 71	6 43	.....	31 14	Senate.
Message of the President and reports proper of the heads of Executive Departments.	Resolution Dec. 4, 1884	284	1,900	.....	128 92	114 62	19 00	262 54	Do.
Commercial Reciprocity Treaty between the United States and Spain.	Resolution Dec. 10, 1884	24	2,000	.....	18 90	9 65	.....	28 55	Do.
Senate Ex. Docs. No. 112, 2d session 46th, No. 194, 1st session 47th, and No. 26, 1st session 48th Congresses.	Resolution Jan. 13, 1885	368	500	.....	629 22	36 98	.....	666 20	Do.
Senate Bill No. 1820	Resolution Jan. 20, 1885	6	1,000	.....	9 57	3 95	.....	13 52	Do.
Evidence taken by Committee on Indian Affairs.	Resolution Jan. 24, 1885	770	50	35 00	1,617 04	18 36	.....	1,670 40	Committee on Indian Affairs.
House Bill No. 6771	Resolution Jan. 28, 1885	18	1,000	.....	34 90	3 31	.....	38 21	Senate.
Foreign telegraphic cables upon the shores of the United States.	Resolution Feb. 13, 1885	32	1,000	.....	13 75	8 10	3 00	24 85	Department of State.
Report of the Librarian of Congress	Resolution Feb. 25, 1885	8	500	.....	5 45	1 67	3 00	10 12	Librarian of Congress.
Public Act No. 13	Resolution Mar. 2, 1885	2	1,000	.....	1 65	41	.....	2 06	Senate.
Appropriation Laws	Resolution Mar. 9, 1885	234	30	.....	9 32	1 41	.....	10 73	Committee on Appropriations.
EXECUTIVE DOCUMENTS (OF WHICH ONLY THE USUAL NUMBER, 1,900, WERE PRINTED).									
First session 48th Congress	Sec. 3792 R. S.	870	21,200	1,162 85	1,841 07	503 70	.....	3,507 62	See table on page 119.
Second session 48th Congress	do	2,000	217,600	2,588 92	6,616 21	1,032 73	.....	10,237 86	Do.
Special session 49th Congress	do	82	3,800	.....	187 90	31 33	.....	219 23	Do.
MISCELLANEOUS DOCUMENTS (OF WHICH ONLY THE USUAL NUMBER, 1900, WERE PRINTED).									
First session 48th Congress	do	46	19,100	.....	135 16	18 02	.....	153 18	Do.
Second session 48th Congress	do	492	122,700	.....	2,043 85	191 34	.....	2,235 19	Do.

No. 1.—*Statement showing the estimated cost of printing, binding, &c.*—Continued.

Title of document.	By what authority printed.	Number of pages.	Number of copies.	Cost of lithographing and engraving.	Cost of composition, stereotyping, press-work, folding, inserting plates, &c.	Cost of paper.	Cost of binding.	Total cost.	How distributed.
PRINTED BY ORDER OF THE SENATE—Con'd.									
2d session 48th Congress—Continued.									
MISCELLANEOUS DOCUMENTS—Cont'd.									
Special session 49th Congress	Sec. 3792 R. S.	86	69,400		$210 22	$33 26		$243 48	See table on page 119.
REPORTS OF COMMITTEES (OF WHICH ONLY THE USUAL NUMBER, 1,900, WERE PRINTED).									
First session 48th Congress	do	206	152,000		598 60	69 95		668 55	See table on page 119.
Second session 48th Congress	do	2,134	1,289,600	$730 00	6,316 51	965 15		8,011 66	Do.
Special session 49th Congress	do	2	1,900		7 07	78		7 85	Do.
MISCELLANEOUS PRINTING.									
Confidential matter, 2d session 48th Congress.	By order of the Senate.	212	6,230		345 62	10 97		356 59	Senate document-room.
Confidential matter, special session 49th Congress.	do	30	475		35 20	81		36 01	Do.
Bills and joint resolutions, 1st session 48th Congress.	Sec. 3791 R. S.	1,042	190,550		1,499 26	475 31		1,974 57	See table on page 119.
Bills and joint resolutions, 2d session 48th Congress.	do	4,654	1,386,575		6,819 58	2,109 13		8,928 71	Do.
Blanks, blank books, calendar, &c.	Requisition from the Secretary.	4,615	3,394,464		5,954 30	415 71	$9,880 52	16,250 53	For the Secretary's office.
Binding reserve work, 3d session 46th Congress.			1,820				2,179 50	2,179 50	See table on page 119.
Binding reserve work, 1st session 47th Congress.			3,640				3,010 50	3,010 50	Do.
Binding reserve work, 2d session 47th Congress.			1,820				1,710 00	1,710 00	Do.

PRINTED BY ORDER OF THE HOUSE OF REPRESENTATIVES.									
2d session 48th Congress.									
Index to laws	Resolution Jan. 8, 1884	26	40	.....	66 77	29	.....	67 06	Committee on Appropriations.
Statement before Committee on Post-Offices and Post-Roads.	.....do	4	10	.....	62	4	.....	66	Do.
Statement before Committee on Appropriations.	.....do	2	10	.....	4 45	4	.....	4 49	Do.
Appropriation laws	.....do	234	50	.....	9 80	2 34	.....	12 14	Do.
Title and table of contents for hearings before committee.	Resolution Jan. 11, 1884	24	50	.....	1 90	58	.....	2 48	Committee on Ways and Means.
Hearing before committee	.....do	16	50	.....	18 49	19	.....	18 68	Do.
Letter from Secretary of State	Resolution Jan. 17, 1884	4	50	.....	5 82	07	.....	5 89	Committee on Foreign Affairs.
Venezuela awards	.....do	16	100	.....	1 63	35	.....	1 98	Do.
Election in Ohio	Resolution Feb. 23, 1884	634	100	.....	51 12	12 80	.....	63 92	Committee on Expenditures, Department of Justice.
Alleged over-allowances in certain cases	.....do	138	100	.....	12 12	2 81	.....	14 93	Do.
Power of Congress to regulate commerce	Resolution Apr. 28, 1884	40	350	.....	58 85	2 84	.....	61 69	Committee on the Judiciary.
Digest of the Rules, &c., of the House of Representatives.	Resolution July 16, 1884	502	2,000	.....	567 50	207 89	2,000 00	2,775 39	House.
Annual message of the President	Resolution Dec. 4, 1884	24	25,000	.....	247 15	157 73	00	479 88	Do.
Report on examination of United States Military Homes for Disabled Volunteer Soldiers.	Resolution Dec. 13, 1884	688	60	.....	255 56	9 40	.....	264 96	Select committee.
House Bill No. 5667	Resolution Dec. 16, 1884	10	925	.....	17 82	4 56	.....	22 38	House.
Senate Bill No. 1139	Resolution Dec. 17, 1884	10	925	.....	16 14	4 56	.....	20 70	Do.
House Report No. 322, 3d session 46th Congress.	Resolution Jan. 5, 1885	10	1,900	.....	28 28	3 81	.....	32 09	Do.

No. 1.—*Statement showing the estimated cost of printing, binding, &c.*—Continued.

Title of document.	By what authority printed.	Number of pages.	Number of copies.	Cost of lithographing and engraving.	Cost of composition, stereotyping, press work, folding, inserting plates, &c.	Cost of paper.	Cost of binding.	Total cost.	How distributed.
PRINTED BY ORDER OF THE HOUSE OF REPRESENTATIVES—Continued.									
2d session 48th Congress—Continued.									
House Report No. 390, 3d session 46th Congress.	Resolution Jan. 5, 1885	10	1,900	.....	$26 98	$3 81	.....	$30 79	House.
Testimony taken referring to sundry bills for relief of various ex-officers of the Army.	Resolution Jan. 10, 1885	64	50	.....	172 12	78	.....	172 90	Committee.
Testimony on payment of pensions, bounty, and back-pay.	Resolution Jan. 22, 1885	454	50	.....	35 50	4 68	.....	40 18	Committee on Pensions, Bounty, and Back-Pay.
Petition, &c., in relation to multicharge guns.	Resolution Jan. 28, 1885	32	100	$30 00	78 17	1 53	.....	109 70	House.
House Report No. 2438	Resolution Feb. 3, 1885	4	1,900	.....	16 77	1 54	.....	18 31	Do.
Testimony taken on the subject of armor-penetrating breech-loading cannon.	Resolution Feb. 9, 1885	126	50	.....	10 13	1 28	.....	11 41	Committee.
Gun Foundry Report	Resolution Feb. 17, 1885	132	1,000	75 00	51 60	42 15	.....	168 75	House.
House Bill No. 8240	Resolution Feb. 28, 1885	6	1,900	.....	10 57	5 64	.....	16 21	Do.
French Spoliation Claims	do	2	2,000	.....	3 30	82	.....	4 12	Do.
EXECUTIVE DOCUMENTS (OF WHICH ONLY THE USUAL NUMBER, 1,900, WERE PRINTED).									
First session 48th Congress	Sec. 3792 R. S.	12	3,800	.....	54 84	4 60	.....	59 44	See table on page 119.
Second session 48th Congress	do	10,752	497,800	2,350 89	45,355 60	4,844 60	$224 00	52,775 09	Do.
MISCELLANEOUS DOCUMENTS (OF WHICH ONLY THE USUAL NUMBER, 1,900, WERE PRINTED).									
First session 48th Congress	do	10,248	30,400	10,319 00	9,614 72	4,125 98	.....	24,059 70	Do.

USUAL NUMBER, 1,000, WERE PRINTED).									
First session 48th Congress	do	528	273,600		1,384 88	203 00		1,587 88	Do.
Second session 48th Congress	do	3,098	1,027,900	96 00	8,931 21	1,243 02		10,272 23	Do.
MISCELLANEOUS PRINTING.									
Bills and joint resolutions, 1st session 48th Congress (925 each).	Sec. 3791 R. S.	764	166,500		1,076 48	348 49		1,424 97	See table on page 119.
Bills and joint resolutions, 2d session 48th Congress (925 each).	do	4,770	1,088,725		7,102 64	2,185 44		9,288 08	Do.
Blanks, blank-books, calendars, &c	Requisition from the Clerk.	4,538	7,209,188		7,940 28	605 46	11,467 52	20,013 26	For the Clerk's office.
Binding reserve work, 1st session 47th Congress.			18,792				21,464 10	21,464 10	See table on page 119.
Binding reserve work, 2d session 47th Congress.			19,836				25,643 25	25,643 25	Do.
Binding reserve work, 1st session 48th Congress.			2,142				3,960 40	3,960 40	Do.
Total cost of printing, binding, &c., done by order of the House of Representatives.		43,864	10,432,553	13,055 89	95,482 66	16,644 63	64,834 27	190,017 45	
LIBRARY OF CONGRESS.									
Miscellaneous documents ordered by Executive Departments, furnished the Library of Congress.	Sec. 3796 R. S.		22,650	151 01	547 67	502 53	232 09	1,433 30	For Library of Congress.
Binding miscellaneous reserve work			2,153				2,067 50	2,067 50	See table on page 119.
Total			24,803	151 01	547 67	502 53	2,299 59	3,500 80	

No. 1.—*Statement showing the estimated cost of printing, binding, &c.*—Continued.

RECAPITULATION.

	Number of pages.	Number of copies.	Cost of lithographing and engraving.	Cost of composition, stereotyping, presswork, folding, inserting plates, &c.	Cost of paper.	Cost of binding.	Total cost.
Total cost of printing, binding, &c., done by authority of law, joint or concurrent resolutions	47,294	2,025,723	$104,108 22	$218,666 31	$104,980 52	$101,652 61	$529,407 66
Total cost of printing, binding, &c., done by order of the Senate	19,091	6,905,781	4,516 77	36,565 35	6,474 96	18,540 02	66 097 10
Total cost of printing, binding, &c., done by order of the House	43,864	10,432,553	13,055 89	95,482 66	16,644 63	64,834 27	190,017 45
Total cost of printing, binding, &c., done by authority of law for the Library of Congress	.....	24,803	151 01	547,67	502 53	2,299 59	3,500 80
Total cost of printing, binding, &c., done on extra copies on private orders	7,990	240,707	757 93	37,522 56	18,558 39	12,360 83	69,199 71
Total cost of paper used in printing speeches	.....	.....	.....	.....	2,921 39	.....	2,921 39
Total cost of printing-paper delivered to the bindery for waste leaves	.....	.....	.....	.....	5,489 89	.....	5,489 89
Total cost of paper used for proofs, &c., by composing, stereotype, and press rooms	.....	.....	.....	.....	581 57	.....	581 57
Aggregate	118,239	19,629,567	122,589 82	388,784 55	156,153 88	199,687 32	867,215 57

-Statem ent showing the estimated cost of printing, binding, &c.—Continued.

DERED BY CONGRESS IN HAND JUNE 30, 1885, WITH AN ESTIMATE OF THE COST THEREOF.

Title.	Number of copies.	Estimated cost.
tinental Congress	5,000	No copy.
of the Angora Goat	10,000	$1,100 00
l Surgical History of the Rebellion, vol. 1, part 3	10,000	30,000 00
l Conventions	11,400	9,175 00
ns to North American Ethnology, vol. 2, in two parts	4,900	12,000 00
ns to North American Ethnology, vol. 6	7,900	9,000 00
ns to North American Ethnology, vol. 7	7,900	12,000 00
ns to North American Ethnology, vol. 8	7,900	10,000 00
ns to North American Ethnology, vol. 9	7,900	10,000 00
ns to North American Ethnology, vol. 10	7,900	10,000 00
t Geological and Geographical Survey, vol. 4, Hayden	6,100	7,000 00
t Geological and Geographical Survey, vol. 13, Hayden	6,100	20,000 00
t Geological and Geographical Survey, vol. 14, Hayden	6,100	12,000 00
ical Survey Monograph, vol. 2, C. E. Dutton	1,900	10,390 00
ical Survey Monograph, vol. 9, R. P. Witfield	4,900	6,400 00
ical Survey Monograph, vol. 10, O. C. Marsh	4,900	44,250 00
ical Survey Monograph, vol. 11, I. C. Russell	4,900	9,400 00
ical Survey Monograph, vol. 12, S. F. Emmons	4,900	45,500 00
al Report of the U. S. Geological Survey	20,400	30,000 00
al Report of the U. S. Geological Survey	20,400	30,000 00
nual Report of the U. S. Geological Survey	20,400	30,000 00
ıal Report of the Director of the Bureau of Ethnology	16,900	31,000 00
ual Report of the Director of the Bureau of Ethnology	17,400	35,000 00
al Report of the Director of the Bureau of Ethnology	17,400	35,000 00
al Report of the Director of the Bureau of Ethnology	17,400	35,000 00
nual Report of the Director of the Bureau of Ethnology	17,400	35,000 00
ort Entomological Commission	31,900	20,000 00
) Culture	6,900	4,800 00
ntomology	2,900	1,350 00
'ish and Fisheries, 1883	11,900	12,000 00
'ish and Fisheries, 1884	11,900	12,000 00
'ish and Fisheries, 1885	12,900	13,000 00
'ood Fishes and Fisheries of the United States, in 6 parts	11,900	55,000 00
;phemeris and Nautical Almanac	3,400	4,500 00
al and Meteorological Observations, 1882	3,900	4,000 00
ıe Smithsonian Institution, 1884	17,960	12,000 00
f First Comptroller of the Treasury, vol. 6	9,417	10,000 00
ıe Superintendent of the Coast and Geodetic Survey, 1884	4,900	11,000 00
ıe Commissioner of Education, 1883-'84	39,900	34,500 00
ıe National Board of Health, 1881	1,000	1,650 00
the late Hon. H. B. Anthony	13,900	4,000 00
the late Hon. Wm. A. Duncan	14,400	3,750 00
the late Hon. John H. Evins	14,400	3,750 00
›rt on Labor and Capital, 4 vols	25,000	50,000 00
national Geographical Congress at Venice	5,400	9,000 00
Schwatka's Report on Alaska	5,400	8,350 00
Ray's Report of Expedition to Point Barrow	3,900	9,580 00
Catalogue of Government Publications	9,000	24,750 00
ecords (under Secretary of War), 15 vols., 11,900 each	178,500	114,600 00
al Report Bureau of Animal Industry	51,900	31,000 00
ıual Report Bureau of Animal Industry	51,900	25,825 00
ıl Report, 1885	310,000	200,000 00
he Tenth Census	.....	146,599 48
	1,122,777	1,348,219 48

large *amount of work* has been done on the above during the year. It is not charged up *sted.*

No. 2.—*Statement showing the approximated cost of printing, and paper for same, and of blank books, binding, ruling, &c., for the Executive and Judicial Departments of the Government during the fiscal year ending June* 30, 1885.

Department.	Printing and paper for same.		Total of printing and paper.	Blank books, binding, ruling, &c.	Aggregate of printing, paper, and binding.
	Printing.	Paper.			
Navy	$34, 730 70	$5, 647 32	$40, 378 02	$24, 116 74	$64, 494 76
War	59, 806 68	24, 352 33	84, 159 01	74, 664 83	158, 823 84
Interior	246, 834 38	41, 378 33	288, 212 71	73, 871 46	362, 084 17
Treasury	108, 978 93	35, 056 64	144, 035 57	104. 113 62	248, 149 19
Post-Office	53, 709 07	58, 739 41	112, 448 48	56, 763 94	169, 212 42
Agriculture	14, 049 37	5, 402 12	19, 451 49	3, 352 00	22, 803 49
State	4, 060 24	2, 132 28	6, 192 52	7, 566 58	13, 759 10
Justice	4, 673 13	601 98	5, 275 11	3, 404 11	8, 679 22
Supreme Court of the United States	2, 120 50	20 30	2, 140 80	643 24	2, 784 04
Supreme Court of District of Columbia	902 90	50 40	953 30	16 92	970 22
Court of Claims	12, 286 15	146 84	12, 432 99	310 89	12, 743 88
Library of Congress	212 89	76 53	289 42	10, 836 69	11, 126 11
National Board of Health	20 50	8 30	28 80	8 70	37 50
Office of Public Printer	2, 578 28	366 23	2, 944 51	2, 430 68	*5, 375 19
Total	544, 963 72	173, 979 01	718, 942 73	362, 100 40	1, 081, 043 13

*Includes $1,355.20 for books and blanks for Congressional Record.

No. 3.—*Statement showing the disbursements on account of salaries and contingent expenses in the office of the Public Printer during the fiscal year ending June* 30, 1885:

Salary of Public Printer	$4,500 00	
Salary of Chief Clerk	2,400 00	
Salary of four clerks, at $1,800 each	7,200 00	
Salary of clerk	1,200 00	
		$15,300 00
Contingent expenses of the office		2,663 77
Total		17,963 77

No. 4.—*Statement showing the disbursements on account of the Public Printing and Binding (except Congressional Record) for the fiscal year ending June* 30, 1885.

Pay of employés:

July (earned in June)	$120,940 08
August (earned in July)	142,774 73
September (earned in August)	118,779 31
October (earned in September)	116,506 74
November (earned in October)	121,099 04
December (earned in November)	119,982 26
January (earned in December)	132,558 33
February (earned in January)	137,219 01
Carried forward	1,009,839 50

Brought forward	$1,009,839 50	
March (earned in February)	126,103 45	
April (earned in March)	121,466 53	
May (earned in April)	129,819 50	
June (earned in May)	131,833 32	
		$1,519,062 30
Improvements and repairs to building:		
Plumbing and gas-fitting	1,175 96	
Repairs	2,015 08	
Lumber	2,585 04	
Glass	76 32	
Paint, &c	387 07	
Awnings, curtains, &c	153 15	
Window ventilators	500 00	
		6,892 62
Machinery, tools, implements, &c:		
1 stereotyping perfecting-press, 1 wetting-machine, 1 curved casting-mold, 1 curved beveling-machine and saw table, 1 finishing-block, 1 shaving-machine, 1 crane	25,000 00	
2 printing-presses, at $4,000	8,000 00	
2 printing-presses, at $2,650	5,300 00	
1 printing-press	6,000 00	
Fixtures to presses	295 25	
1 backing-machine	450 00	
1 backing-machine	750 00	
Fixtures to backing-machines	55 50	
3 numbering-machines, at $600	1,800 00	
2 numbering-machines, at $175	350 00	
1 numbering-machine	32 00	
2 steel numbering-heads, at $75	150 00	
1 Gill hot-rolling machine	2,250 00	
1 skiving-machine	200 00	
1 skiving-machine	800 00	
Fixtures to skiving-machine	6 00	
3 standing presses, at $45	135 00	
1 case binding-machine	75 00	
2 embossing-presses, at $850	1,700 00	
1 embossing-press	1,000 00	
1 proof-press and stand	49 50	
1 cutting-machine	450 00	
Fixtures to cutting-machines	121 50	
2 cutting-knives, at $25	50 00	
2 cutting-knives, at $22	44 00	
2 cutting-knives, at $20.50	41 00	
4 cutting-knives, at $17	68 00	
24 cutting-knives, at $10.50	252 00	
11 cutting-knives, at $9.50	104 50	
2 cutting-knives, at $6	12 00	
1 cutting-knife	19 85	
1 17-inch shaver-knife	12 00	
2 angle-knives, at $11	22 00	
17 pairs circular cutters	126 00	
2 dozen cutter-woods, at $3	6 00	
Carried forward	55,727 10	1,525,954 92

Brought forward	$55,727 10	$1,525,954 9
18 rotary cutters, at $1.25	22 50	
Fixtures to ruling-machines	389 06	
3 sewing-machines, at $1,200	3,600 00	
Fixtures to sewing-machines	232 07	
2 roller-molds, at $5	10 00	
12 finishing-presses, at $2.50	30 00	
1 wooden frame for paring-machine	2 50	
Fixtures to calendering-machine	66 60	
Fixtures to drying-machine	30 00	
1 rotary lead lap	125 00	
2 adjustable body molds, at $45	90 00	
1 plate casting-box and 2 sets of gauges	200 00	
1 stereotype and electrotype saw-table and steel fixtures	225 00	
1 hydraulic pressing-machine and pumps	1,500 00	
Fixtures to pressing-machines	76 45	
5,000 patent releasable clips, at 7 cents	350 00	
7,500 octavo press-boards, at $73.33 per 1,000	549 99	
5,000 quarto press-boards, at $106.67 per 1,000	533 34	
5,000 special press-boards, at $100 per 1,000	500 00	
1 steam-guard folding-machine	150 00	
Fixtures to folding-machines	18 00	
2,187 pounds rope, for pressing-machines, at 11½ cents	251 51	
2,821 pounds rope, for pressing-machines, at 10 cents	282 10	
1 pamphlet wire stitching-machine	850 00	
Fixtures to stitching-machines	128 52	
222½ pounds iron castings, at 5 cents	11 13	
300 feet belting, at 4 cents	12 00	
13 feet belting, at 8 cents	1 04	
75 feet belting, at 10 cents	7 50	
90 feet belting, at 12 cents	10 80	
150 feet belting, at 13 cents	19 50	
300 feet belting, at 16 cents	48 00	
301½ feet belting, at 16½ cents	49 71	
150 feet belting, at 22½ cents	33 75	
75 feet belting, at 37 cents	27 75	
45 feet belting, at 40 cents	18 00	
150 feet belting, at 44 cents	66 00	
30 feet belting, at 46 cents	13 80	
29 feet 2½ inches belting, at 69 cents	20 15	
48 feet belting, at 81 cents	38 88	
113 feet belting, at 91 cents	102 83	
29 feet belting, at 58 cents	16 82	
100 pounds cotton waste, at 10¼ cents	10 25	
990 pounds cotton waste, at 9.7 cents	96 03	
752 15/16 pounds wire	180 70	
66½ pounds wire	33 25	
100½ pounds wire	40 20	
30 pounds wire	3 30	
45¾ pounds lacing-leather	29 73	
1 side lacing-leather	2 25	
Grinding 14 rotary knives	7 50	
Boiler repairs	153 60	
Furnace repairs	49 25	
Carried forward	67,043 46	1,525,954 92

Brought forward	$67,043 46	$1,525,954 92
grinding machine	175 00	
'heel for grinding-machine	20 00	
tone	4 25	
bookbinders' hammers, at $13.75	27 50	
inders' hammers	10 50	
nds packing	27 04	
plow-knives, at $12	60 00	
1 shoe-knives, at $2	72 00	
ng 16 hand-tools, at $1	16 00	
ring pallets, at $11	132 00	
ring pallets, at $8	96 00	
ing pallets, at $7.50	90 00	
ring pallets, at $7	84 00	
s, at $2.50	5 00	
4 pallets, at $1.50	6 00	
ers' rolls, at $6	138 00	
ers' rolls, at $7	84 00	
ers' rolls, at $5.75	69 00	
rs' rolls, at $3	24 00	
ers' rolls, at $2.75	49 50	
rs' rolls, at $6.50	39 00	
rs' rolls, at $9.50	57 00	
rs' rolls, at $8	48 00	
rs' rolls, at $7.50	45 00	
rs' rolls, at $8.50	51 00	
rs' rolls, at $5.50	33 00	
	9 00	
ches	8 60	
dividers, at $9	27 00	
lividers	1 00	
eyelets, at 87½ cents	5 25	
nd rolls	27 00	
olls, at $3	18 00	
rolls, at $5	40 00	
th roll	5 00	
olishers, at $2.50	30 00	
hers' rubbers, at $1	134 00	
-stones, at 25 cents	25 00	
nes	3 40	
heel truck	15 00	
wheels, rubber-bound, at $3.75	116 25	
wheels, rubber-bound, at $3.25	78 00	
wheels, rubber-bound, $2.25	20 25	
ks, at $8	16 00	
oilers, at $4	28 00	
oilers	6 50	
	5 00	
ricators, at 3 cents	30 00	
icators, at 5 cents	20 00	
ating cups, at 45 cents	10 80	
ating cups, at 40 cents	9 60	
e stands, with racks, at $4.50	162 00	
rs' stands, at $3	18 00	
Carried forward	69,374 90	1,525,954 92

Brought forward	$69,374 90	$1,525,954
6½ dozen fitches	9 90	
1 dozen paste-piggins	6 00	
6 gas stoves, at $7	42 00	
4 gas stoves, at $3	12 00	
9¼ dozen sash-tools	34 55	
2 dozen glue-pots, at $18	36 00	
1 glue-pot	1 25	
1 glue-kettle	5 00	
3 evaporating-pans, at $2	6 00	
1 metal pot	11 20	
12 burnishers, at $1.75	21 00	
9 dozen trimmers, at $5	45 00	
13 dozen folders, at $3	39 00	
9 side-stamps	49 00	
55 hand-stamps	62 50	
10 pieces of lettering	10 50	
1 alphabet roll	10 50	
Recutting 42 hand-stamps	50 75	
14 book saws	28 98	
60 circular saws	120 32	
6 sets circular saws, at $9	54 00	
56 dozen files	132 39	
1 dozen screw-drivers	3 60	
25 joint rods, at 75 cents	18 75	
24 pair shears, at $2	48 00	
16 feet brass fillet, at $1.25	20 00	
Shafting, pulleys, &c	1,186 53	
Iron, steel, tools, &c	752 91	
Type, various kinds	5,603 68	
20,008 feet rule, at 6 cents	1,200 48	
1,000 feet rule, at 8 cents	80 00	
2,000 feet rule, at 12 cents	240 00	
500 feet rule, at 14 cents	70 00	
150 feet rule, at 40 cents	60 00	
12 chases	70 20	
2 dozen mallets, at $2.40	4 80	
4 dozen mallets, at $2.24	8 96	
82 composing sticks	60 57	
250 galleys, at $2.50	625 00	
64 stereotype blocks, at $2.20	140 80	
2 electrotyper's steel finishing blocks, at $70	140 00	
48 hooks for stereotype blocks	6 48	
48 steel pinions for stereotype blocks	10 80	
1,100 feet blocking board, at 24.5 cents	269 51	
5,040 sheets blue and white bonnet boards, at 4 cents	201 60	
1 dozen brass ratchets	1 80	
70 dozen patent steel quoins, at $2.50	175 00	
154 keys, at 50 cents	77 00	
3,500 quoins, at 30 cents per 100	10 50	
1,100 quoins, at 6 cents per 100	6 60	
2 sort cabinets, at $40	80 00	
1 type case	15 00	
69 pairs cases, at $1.60	110 40	
Carried forward	81,461 71	1,525,954 93

Brought forward	$81,461 71	$1,525,954 92
rs cases	1 60	
es, at 90 cents	4 50	
ass cases, at $6.50	136 50	
ozen lye-brushes, at $3.25	54 17	
zen pick-brushes, at $1.90	9 03	
lozen glue-brushes, at $4.25	13 11	
lozen glue-brushes, at $6.70	40 76	
lozen glue-brushes, at $14	85 16	
lozen glue-brushes, at $22.50	136 88	
en dust-brushes, at $4.50	22 50	
en dust-brushes, at $6	12 00	
hitewash brushes	65 60	
en marbler's brushes, at $3.50	10 50	
llaneous brushes	106 88	
zen brooms, at $2.97	124 74	
s, stools, &c	153 50	
hes-wringers, at $6.50	13 00	
hes-wringer	8 50	
er-cooler	18 00	
er-cooler	6 25	
er-coolers, at $15	45 00	
en Challenge fire-extinguishers, at $12	60 00	
hograph stones, at $1.25	15 00	
ograph stones, at $1.50	3 00	
er-press	13 00	
ric-light plant, &c	17,113 00	
ric-light fixtures	1,215 58	
ric call-bells, &c	33 98	
ric clock	65 00	
amo	425 00	
king dynamo	100 00	
res for dynamo	10 00	
		101,583 45
aterial, &c.:		
reams ledger cap, 19 pounds, at $3.021	$1,661 55	
reams ledger cap, 19 pounds, at $2.793	558 60	
reams ledger cap, 19 pounds, at $2.432	1,675 64	
reams ledger cap, 19 pounds, at $2.413	1,599 83	
reams ledger cap, 16 pounds, at $2.544	508 80	
reams ledger cap, 16 pounds, at $2.352	235 20	
reams ledger medium, 38 pounds, at $6.042	1,510 50	
reams ledger medium, 38 pounds, at $5.70	3,705 00	
reams ledger medium, 38 pounds, at $4.826	3,392 67	
reams ledger super royal, 57 pounds, at $9.12	1,842 24	
reams ledger super royal, 57 pounds, at $8.322	2,454 99	
reams ledger demy, 29 pounds, at $4.524	1,158 14	
reams ledger demy, 29 pounds, at $3.712	1 069 04	
reams ledger demy, 29 pounds, at $4.263	2,984 10	
reams ledger demy, 29 pounds, at $3.683	4,312 79	
reams ledger demy, 24 pounds, at $3.744	793 73	
reams ledger demy, 24 pounds, at $3.528	882 00	
reams ledger imperial, 57 pounds, at $11.52	288 00	
reams ledger imperial, 75 pounds, at $11.40	855 00	
Carried forward	31,487 82	1,627,538 37

	Brought forward	$31,487 82	$1,627,538 3
150	reams ledger double-cap, 48 pounds, at $7.056	1,058 40	
150	reams ledger double-cap, 42 pounds, at $6.174	926 10	
150	reams ledger double-cap, 38 pounds, at $5.586	837 90	
765 $\frac{348}{500}$	reams ledger double-cap, 38 pounds, at $4.94	3,782 52	
214	reams ledger double-cap, 32 pounds, at $4.16	890 24	
400	reams ledger double-cap, 28 pounds, at $4.116	1,646 40	
100	reams ledger double-demy, 75 pounds, at $13.125	1,312 50	
320	reams ledger royal, 46 pounds, at $7.36	2,355 20	
150	reams ledger royal, 46 pounds, at $6.90	1,035 00	
31	reams ledger special, 30 pounds, at $4.80	148 80	
71	reams ledger special, 30 pounds, at $3.90	276 90	
210	reams ledger special, 31 pounds, at $4.03	846 30	
140	reams ledger special, 27 pounds, at $3.888	544 32	
782 $\frac{97}{500}$	reams ledger special, 24 pounds, at $3.12	2,440 43	
70	reams ledger special, 23 pounds, at $3.312	231 84	
140	reams manila, 100 pounds, at $8.90	1,246 00	
100	reams manila, 50 pounds, at $4.59	459 00	
371½	reams manila, 50 pounds, at $4.47	1,660 60	
50	reams hardware, at $3.92	196 00	
10	reams blotting, at $12	120 00	
40	reams French folio, at $1.40	56 00	
10	reams bond, at $4.25	42 50	
2	reams stereotype, at $13.60	27 20	
50	reams comb-lining, at $10.39	519 50	
30	reams comb-lining, at $9.74	292 20	
70	reams comb-lining, at $9.69	678 30	
30	reams marble, at $6.14	184 20	
65	reams marble, at $6.09	395 85	
20 $\frac{436}{500}$	reams plaid, at $9	187 67	
23 $\frac{374}{500}$	reams plaid, at $8	189 98	
5	reams copying, at $4.25	21 25	
150	reams copying, at $1.15	172 50	
100	reams copying, at $1.75	175 00	
300	reams tissue, at $1.93	579 00	
50	sheets white photo. board	2 59	
733	pounds card middle, at 6½ cents	47 64	
			57,073 65
Binding cloth,	50 pieces, at $6.54	327 00	
	75 pieces, at $6.50	487 50	
	160 pieces, at $6.35	1,016 00	
	50 pieces, at $6.19	309 50	
	197 pieces, at $5.86	1,154 42	
	50 pieces, at $5.85	292 50	
	800 pieces, at $4	3,200 00	
			6,786 92
Russia leather,	1,031¾ feet, at 20 cents	206 35	
	35,043 feet, at 18 cents	6,307 74	
	20¾ feet, at 16 cents	3 32	
			6,517 41
Title leather,	21 dozen, at $11.50	241 50	
	221 dozen, at $10.75	2,375 75	
	111 dozen, at $9.75	1,082 25	
			3,699 50
	Carried forward		1,701,615 85

Brought forward		$1,701,615 85
:ey morocco, ½ dozen, at $30.50	$5 08	
3⅓ dozen, at $29	91 83	
60¼ dozen, at $24.10	1,458 05	
25 dozen, at $22.24	556 00	
161¼ dozen, at $22.10	3,569 15	
¾ dozen, at $16	12 00	
10 dozen, at $30	300 00	
		5,992 11
'-calf, 130 dozen, at $34.50	4,485 00	
275¼ dozen, at $30	8,265 00	
		12,750 00
calf, 1 dozen		24 70
lish calf, 12⅛ dozen, at $23		279 83
' sheep, 244 dozen, at $11.50	2,806 00	
1,650¼ dozen, at $10	16,505 00	
50¼ dozen, at $8	404 00	
		19,715 00
ns, 31 dozen, at $8.75	271 25	
20¼ dozen, at $8.50	174 25	
30 dozen, at $8.45	253 50	
90¼ dozen, at $8.25	746 63	
		1,445 63
'ers, 24 dozen, at $9.95	238 80	
400¼ dozen, at $9.75	3,904 88	
250¼ dozen, at $8	2,004 00	
100¼ dozen, at $6.75	678 38	
50 dozen, at $6	300 00	
		7,126 06
hers, 750¼ dozen, at $4.25		3,189 62
:hment, 20¼ dozen, at $9		184 50
hide buffing, 999 feet, at 9.2 cents		91 91
l leaf, 50 packs, at $6.49	324 50	
1,600 packs, at $6.40	10,240 00	
200 packs, at $5.50	1,100 00	
3 packs (edge-gold), at $7.75	23 25	
400 packs (imitation), at $1.30	520 00	
		12,207 75
lers' boards, 267,500 pounds, at 4.8 cents	12,840 00	
50,000 pounds, at 3.5 cents	1,750 00	
45,850 pounds, at 3.2 cents	1,467 20	
45,300 pounds, at 3 cents	1,359 00	
72,850 pounds, at 2.7 cents	1,966 95	
1,500 pounds, at 2 cents	30 00	
50,000 pounds, at 1.9 cents	950 00	
992 pounds, at 6 cents	59 52	
		21,422 67
:ad, 100 pounds, at 94 cents	94 00	
1,650¼ pounds, at 89 cents	1,468 95	
100 pounds, at 80 cents	80 00	
106 pounds, at 79 cents	83 74	
105 pounds, at 73.5 cents	77 17	
600 pounds, at 66.2 cents	397 20	
100 pounds, at 53.5 cents	53 50	
Carried forward	2,254 56	1,785,045 63

Brought forward	$2,254 56	$1,785,045
120 dozen spools, at $1.75	210 00	
		2,464
Twine, 576 pounds, at 34 cents	195 84	
1,650½ pounds, at 31 cents	511 65	
264½ pounds, at 17.4 cents	46 02	
580 pounds, at 12 cents	69 60	
567 pounds, at 11 cents	62 37	
3,453 pounds, at 9.1 cents	314 22	
		1,199
Page cord, 100 pounds, at 26 cents	26 00	
500 pounds, at 24.1 cents	120 50	
		146
Cotton, 514 yards, at 20 cents	102 80	
1,285¾ yards, at 11.7 cents	150 43	
60 yards, at 11 cents	6 60	
1,341¼ yards, at 9¾ cents	130 78	
3,333¾ yards, at 5½ cents	183 36	
3,384¾ yards, at 5¼ cents	177 70	
		751
Glue, 23,220 pounds, at 13½ cents		3,134
Crash, 5,075 yards, at 9.4 cents		477
Gingham, 40 yards, at 10 cents		4
Webbing, 20 pieces, at 50 cents		10
Cambric, 9 yards, at 7 cents	63	
1,000 yards, at 6.4 cents	64 00	
		64
Silk braid, 1 piece	2 00	
132 yards, at 9 cents	11 88	
		13
Gray super, 2,000 yards, at 3.7 cents	74 00	
5,960 yards, at 3.4 cents	202 64	
		276
Canvas, 213 yards, at 18.4 cents	39 19	
1,500 yards, at 17 cents	255 00	
		294
Jeweler's cotton, 10 pounds, at $1.50	15 00	
51¼ pounds, at 49 cents	25 11	
		40
Crash for towels, 1,200 yards, at 11 cents		132
Flannel, 40 yards, at 75 cents	30 00	
101 yards (Canton), at 15 cents	15 15	
		45
Manila bagging, 780 pounds, at 5½ cents		42
Tarlatan, 11½ yards, at 20 cents		2
Printing ink, 25 pounds, at $5	125 00	
300 pounds, at $4	1,200 00	
410 pounds, at $3	1,230 00	
10 pounds, at $1.75	17 50	
2,492 pounds, at $1.50	3,738 00	
571 pounds, at $1.25	713 75	
270 pounds, at $1	270 00	
598 pounds, at 80 cents	478 40	
1,683 pounds, at 60 cents	1,009 80	
Carried forward	8,782 45	1,794,145 61

Brought forward	$8,782 45	$1,794,143 61
4,727 pounds, at 50 cents	2,363 50	
1,460 pounds, at 40 cents	584 00	
1,682 pounds, at 30 cents	504 60	
10 pounds printer's varnish, at 20 cents	2 00	
15 pounds bronze blue, at $2	30 00	
		12,266 55
ller composition, 9,266 pounds, at 45 cents		4,169 70
ycerine, 913 pounds, at 25 cents	228 25	
2½ gallons	8 10	
5 pounds, at 35 cents	1 75	
5 pounds, at 34 cents	1 70	
		239 80
tash, 4,421 pounds, at 4.3 cents	190 10	
30 pounds, at 7.5 cents	2 25	
		192 35
ibricating compound, 100 pounds, at 23 cents	23 00	
76 pounds, at 20 cents	15 20	
		38 20
iler compound, 68 pounds, at 12 cents	8 16	
102 pounds, at 11 cents	11 22	
		19 38
ay binding, 4 dozen, at $2		8 00
our, 7 barrels, at $5.86	41 02	
107 barrels, at $5	535 00	
		576 02
eswax, 66 pounds, at 41.5 cents	27 39	
287 pounds, at 35½ cents	101 89	
		129 28
aid, 3,900 yards (alpaca), at 1.2 cents		46 80
ead bands, 50 pieces, at 89 cents	44 50	
40 pieces, at 80 cents	32 00	
100 pieces, at 72 cents	72 00	
250 pieces, at 62 cents	155 00	
150 pieces, at 55 cents	82 50	
		386 00
cohol, 298½ gallons, at $2.248		671 04
ls, 1,173 gallons sperm, at $1.20	1,407 60	
56½ gallons cylinder, at 65 cents	36 72	
29 gallons cylinder, at 60 cents	17 40	
201 gallons electric, at 60 cents	120 60	
31½ gallons electric, at 65 cents	20 48	
3 gallons neatsfoot	3 00	
3 dozen olive, at $9.75	29 25	
46 dozen sweet, at 77 cents	35 42	
		1,670 [illegible]
up, 25 gallons, at 60 cents	15 00	
25 gallons, at 50 cents	12 50	
		27 50
nzine, 1,104½ gallons, at 5.2 cents		[illegible]
ap, 6,653 pounds, at 5.9 cents	392 [illegible]	
4 cakes carbolic, at 25 cents	1 00	
2 bars castile, at 50 cents	1 00	
2 dozen cakes, at $1.50	3 00	
		397 [illegible]
Carried forward		1,[illegible]

Brought forward		$1,815,075 27
Needles, 150 papers, at 6 cents	$9 00	
270 papers, at 10 cents	27 00	
		36 00
Pins		6 10
Blankets, 27½ yards super English back, at $5.75	158 12	
1 pair army	4 50	
		162 62
Wax tapers, 20 dozen boxes, at $3		60 00
Stereotype metal, 105,323 pounds, at 9.1 cents		9,584 37
Lime, 7 barrels, at $1.10		18 70
Plaster-of-paris, 40 barrels, at $2.29		91 60
Tin, 1,200 pounds, at 21 cents		252 00
Tin-foil, 300 pounds, at 24.4 cents		73 20
Antimony, 273 pounds, at 15.5 cents		42 32
Kaolin, 4 barrels, at $5.90		23 60
Potter's clay, 20 barrels, at $2.75	55 00	
15 barrels, at $2	30 00	
		85 00
Sponge, 20 pounds, at $1.85	37 00	
126 pounds, at $2.05	258 30	
		295 30
Lead, 70 pounds, black, at 65 cents	45 50	
6,000 pounds, bar, at 49 cents	294 00	
		339 50
Iron filings, 1,286 pounds, at 10 cents	128 60	
450 pounds, at 5 cents	22 50	
		151 10
Stereotype powder, 80 pounds, at 15 cents		12 00
Copper battery plates, 1,045 pounds, at 27½ cents		287 38
Emery, 605 pounds, at 5 cents		30 25
Earthen crocks, 16 dozen, at $1.49		23 84
Wire rope, 400 feet, at 10 cents		40 00
Rubber sheeting, 92 yards, at 54 cents		49 68
Sheet rubber, 5 pounds, at $3.25		16 25
Virgin rubber, 20½ pounds, at $1.50		30 75
Hall's patent safes, 2		751 75
Ice		1,339 94
Coal		3,267 56
Eggs		35 26
Vinegar		30
Gas		7,306 50
Sawdust		115 65
Washing towels, &c		1,324 76
Telephone rent, &c		698 84
Telegraphing		60 02
Stationery		601 75
Boxing, cartage, and freight		1,467 80
Preparing index, &c., for report of Board on behalf United States Executive Departments at International Exhibition, 1876		300 00
Miscellaneous items		1,247 44
Dyes, gums, &c.:		
Carmine, 150 ounces, at 34.4 cents		51 60
Chrome-yellow, 72 pounds, at 35 cents		25 20
Carried forward		1,845,394 20

Brought forward		$1,845,394 20
bumen, 300 pounds, at 55 cents		165 00
albumen, 225 pounds, at 24 cents		54 00
arine blue, 2 pounds, 40 cents	$0 80	
56 pounds, at 35 cents	19 60	
12 pounds, at 30 cents	3 60	
		24 00
380 pounds, at 6 cents	22 80	
2 pounds, at 5 cents	10	
		22 90
acid, 100 pounds, at 25 cents		25 00
sh, 150 pounds, at 15 cents		22 50
og, 476 pounds, at 34.9 cents		166 13
black, 1 pound		15
ite copper, 336 pounds, at 5½ cents		18 48
nia, 108 pounds, at 20 cents		21 60
ite ether, 1 carboy		4 99
ic acid, 1 carboy		3 99
e of tin, 1 pound		30
rabic, 75 pounds, at 45 cents		33 75
te, 20 pounds, at $1		20 00
lum, 1 bottle		6 00
varnish, 4 dozen, at $14.10		56 40
ake, 75 pounds, at 55 cents		41 25
e blue, 50 pounds, at 70 cents		35 00
, 4 pounds, at $5		20 00
, 10 pounds, at 12 cents	1 20	
100 pounds, at 10 cents	10 00	
300 pounds, at 9 cents	27 00	
		38 20
powder, 100 pounds, at 45 cents		45 00
paste, 1 dozen boxes		12 00
g, 100 pounds		1 50
ent, 6,856 pounds, at 7½ cents		514 18
ne, 150 pounds, at 15 cents	22 50	
100 pounds, at 12 cents	12 00	
		34 50
s, 25 pounds, at 25 cents		6 25
alls, 158, at 25 cents		39 50
Horses, wagons, &c.:		
mare	125 00	
double team and driver, 112 days, at $4	448 00	
feed	2,028 30	
s and repairs	1,137 05	
s and repairs	321 00	
g	479 75	
ts	2 85	
nary services and medicine	39 75	
ise-skin	75	
grease	8 00	
age of horse	12 00	
		4,602 45
Total		1,851,429 22

Value of bindery stock on hand, exclusive of machinery and tools, on June 30, 1883	$32,130
Value of bindery stock on hand, exclusive of machinery and tools, on June 30, 1884	61,662
Value of bindery stock on hand, exclusive of machinery and tools, on June 30, 1885	49,518

No. 5.—*Statement showing the disbursements on account of paper for public printing (except Congressional Record) for the fiscal year ending June 30, 1885.*

PRINTING PAPER.

496 reams calendered, 40 pounds, 21¼ by 29 inches, at $2.72	$1,349 12
644 reams calendered, 42 pounds, 22¾ by 31¼ inches, at $3.108	2,001 55
898 reams calendered, 42 pounds, 22¾ by 31¼ inches, at $2.856	2,564 69
1,187 reams calendered, 45 pounds, 24 by 32 inches, at $3.285	3,899 28
114,173 pounds uncalendered, 45 pounds, 24 by 38 inches, at 6.3 cents	7,192 90
9,738 reams uncalendered, 48 pounds, 24 by 38 inches, at $2.976	28,980 28
5,322 reams uncalendered, 48 pounds, 24 by 38 inches, at $2.928	15,582 82
5,001 reams uncalendered, 48 pounds, 24 by 38 inches, at $2.88	14,402 88
7,502 reams uncalendered, 48 pounds, 24 by 38 inches, at $2.736	20,525 47
6,092 reams and 15 quires uncalendered, 48 pounds, 24 by 38 inches, at $3.024	18,424 48
989 reams calendered, 48 pounds, 24 by 38 inches, at $3.264	3,228 10
1,053 reams calendered, 50 pounds, 22¾ by 31¼ inches, at $3.70	3,896 10
400 reams calendered, 50 pounds, 22¾ by 1¼ inches, at $3.40	1,360 00
213 reams calendered, 50 pounds, 24 by 38 inches, at $3.70	788 10
80 reams calendered, 50 pounds, 24 by 38 inches, at $3.40	272 00
553 reams calendered, 60 pounds, 24 by 32 inches, at $4.38	2,422 14
104 reams calendered, 65 pounds, 27 by 41 inches, at $4.81	500 24
482 reams calendered, 70 pounds, 24 by 38 inches, at $4.76	2,294 32
1,078 reams and 10 quires calendered, 70 pounds, 24 by 38 inches, at $5.11	5,511 13
1,006 reams uncalendered, 90 pounds, 32 by 48 inches, at $6.57	6,609 42
1,564 reams uncalendered, 90 pounds, 32 by 48 inches, at $6.03	9,430 92
Carried forward	151,235 94

Brought forward	$151,235 94	
2,022 reams and 17 quires uncalendered, 96 pounds, 38 by 48 inches, at $5.568	11,263 25	
6 reams uncalendered, 30 pounds, 24 by 38 inches, at $1.92	11 52	
493 reams tinted, 40 pounds, 21¼ by 29 inches, at $2.96	1,459 28	
881 reams tinted, 40 pounds, 22¾ by 31¼ inches, at $2.96	2,607 76	
290 reams tinted, 40 pounds, 22¾ by 31¼ inches, at $2.72	788 80	
438 reams tinted, 50 pounds, 24 by 38 inches, at $3.70	1,620 60	
164 reams tinted, 50 pounds, 24 by 38 inches, at $3.40	557 60	
209 reams tinted, 60 pounds, 24 by 32 inches, at $4.50	940 50	
1,658 reams tinted, 60 pounds, 24 by 32 inches, at $4.44	7,361 52	
218 reams tinted, 60 pounds, 24 by 32 inches, at $4.20	915 60	
204 reams tinted, 70 pounds, 24 by 38 inches, at $5.18	1,056 72	
		$179,819 09

WRITING AND OTHER PAPERS.

450 reams and 8 quires quarto-post, 10 pounds, at 92 cents	$414 37	
200 reams quarto-post, 10 pounds, at 85 cents	170 00	
198 reams and 10 quires quarto-post, 12 pounds, at $1.104	219 14	
841 reams and 8 quires cap, 16 pounds, at $1.504	1,265 47	
200 reams cap, 16 pounds, at $1.36	272 00	
1,036 reams demy, 20 pounds, at $1.80	1,864 80	
300 reams demy, 20 pounds, at $1.68	504 00	
481 reams demy, 25 pounds, at $2.25	1,082 25	
100 reams demy, 25 pounds, at $2.10	210 00	
1,440 reams folio, 16 pounds, at $1.344	1,935 36	
475 reams folio, 23 pounds, at $2.07	983 25	
154 reams medium, 20 pounds, at $1.80	277 20	
672 reams medium, 26 pounds, at $2.34	1,572 48	
196 reams medium, 26 pounds, at $2.21	433 16	
626 reams royal, 28 pounds, at $2.52	1,577 52	
272 reams royal, 28 pounds, at $2.352	639 74	
103 reams royal, 45 pounds, at $4.05	417 15	
506 reams super-royal, 35 pounds, at $3.15	1,593 90	
964 reams imperial, 40 pounds, at $3.60	3,470 40	
300 reams imperial, 40 pounds, at $3.36	1,008 00	
1,011 reams double-cap, 23 pounds, at $2.07	2,092 77	
490 reams double-cap, 24 pounds, at $2.16	1,058 40	
832 reams double-cap, 28 pounds, at $2.52	2,096 64	
160 reams double-cap, 28 pounds, at $2.352	376 32	
1,992 reams double-cap, 32 pounds, at $2.88	5,736 96	
300 reams double-cap, 32 pounds, at $2.688	806 40	
244 reams double-cap, 36 pounds, at $3.24	790 56	
185 reams and 12 quires double-cap, 36 pounds, at $3.024	561 25	
499 reams double-demy, 34 pounds, at $3.06	1,526 94	
300 reams double-demy, 34 pounds, at $2.822	846 60	
1,016 reams double-demy, 40 pounds, at $3.60	3,657 60	
500 reams double-demy, 40 pounds, at $3.32	1,660 00	
195 reams double-demy, 50 pounds, at $4.50	877 50	
100 reams double-demy, 50 pounds, at $4.15	415 00	
624 reams double-folio, 40 pounds, at $3.60	2,246 40	
500 reams double-folio, 40 pounds, at $3.36	1,680 00	
192 reams and 10 quires double folio, 55 pounds, at $4.95	952 88	
Carried forward	47,292 41	179,819 09

Brought forward	$47,292 41	$179,819 09
101 reams special, 50 pounds, at $4.50	454 50	
1,074 reams special, 35 pounds, at $3.15	3,383 10	
300 reams special, 35 pounds, at $2.975	892 50	
24 reams special, 35 pounds, at $2.59	62 16	
853 reams special, 32 pounds, at $2.88	2,456 64	
94 reams blue double-cap, 32 pounds, at $2.912½	273 73	
135 reams yellow double-cap, 32 pounds, at $3.36	453 60	
212 reams yellow double-cap, 32 pounds, at $2.944	624 13	
89 reams and 8 quires buff double-cap, 32 pounds, at $3.36	300 38	
162 reams buff double-cap, 32 pounds, at $2.944	476 93	
202 reams green double-cap, 32 pounds, at $2.944	594 69	
212 reams pink double-cap, 32 pounds, at $3.36	712 32	
198 reams pink double-cap, 32 pounds, at $2.944	582 91	
81 reams lilac double-cap, 32 pounds, at $2.944	238 46	
54 reams and 2 quires gold envelope, 28 pounds, at $2.632	142 39	
430 reams and 11 quires cover-paper, 36 pounds, at $2.988	1,286 47	
98 reams and 10 quires cover-paper, 36 pounds, at $2.808	276 59	
228 reams and 6 quires cover-paper, 50 pounds, at $4.15	947 44	
102 reams and 3 quires cover-paper, 50 pounds, at $4	408 60	
109 reams and 5 quires cover-paper, 50 pounds, at $3.90	426 08	
200 reams tissue, at 89 cents	178 00	
14 reams and 2 quires plate-paper, at $26	366 60	
64,241 pounds plate-paper, at 8 3 cents	5,332 01	
49,677 pounds plate-paper, at 12 cents	5,961 24	
74,300 pounds map-paper, at 8.3 cents	6,166 98	
10,767 pounds map-paper, at 10.4 cents	1,119 76	
118 reams linen map-paper, at $6	708 00	
11,542 pounds manila paper, at 6.3 cents	727 14	
300 sheets parchment deed-paper, at $37.20 per M	11 16	
8,000 sheets bullet-patch paper, at $14 per M	112 00	
5,300 sheets bullet-patch paper, at $18.67 per M	98 95	
25,000 sheets imitation parchment, at 8 mills	200 00	
10,000 sheets artificial parchment, at $50.40 per M	504 00	
12,600 sheets artificial parchment, at $33.60 per M	423 36	
1,880 pounds artificial parchment, at 21 cents	394 80	
40,000 sheets onion-skin paper, at $7.70 per M	308 00	
91,146 sheets bristol-board, at 2.6 cents	2,369 80	
8,039 sheets bristol-board, at 2.5 cents	200 97	
27,600 sheets bristol-board, at 2.3 cents	634 80	
8,454 sheets bristol-board, at 2.2 cents	185 99	
22,600 sheets bristol-board, at 2.1 cents	474 60	
484,948 sheets bristol-board, at 2 cents	9,698 96	
304,901 sheets bristol-board, at 1.8 cent	5,488 21	
10,627 sheets bristol-board, at 1.7 cent	180 66	
6,734 pounds bristol-board, at 8 cents	538 72	
20,858 pounds bristol-board, at 7.9 cents	1,647 78	
10,095 sheets R. R. board, at 4.1 cents	413 90	
10,505 sheets R. R. board, at 4.03 cents	451 71	
2,205 sheets colored card-board, 4 cents	88 20	
4,278 sheets colored card-board, 3.9 cents	166 84	
30 reams copying-paper, at $4.25	127 50	
20 reams copying-paper, at $2.90	87 00	
Carried forward	107,653 67	179,819 09

Brought forward	$107,653 67	$179,819 09
6,777 pounds glazed bond-paper, at 24.3 cents	8,936 81	
2,017 pounds glazed bond-paper, at 20.8 cents	2,499 53	
2,000 sheets glazed bond-paper, at $19.50 per M	39 00	
1,500 sheets glazed bond-paper, at $25.50 per M	38 25	
1,000 sheets glazed bond-paper, at $20.50 per M	20 50	
		119,187 76
Total		299,006 85

Inventory showing the quantity of paper on hand June 30, 1885.

6,711 18/20 reams of printing-paper, costing	$21,587 60
1,096 reams of tinted-paper, costing	4,784 76
4,225 8/20 reams of writing-paper, costing	10,739 23
839 11/20 reams of cover-paper, costing	3,146 29
14/20 reams of post-office paper, costing	2 51
54 18/20 reams of tissue-paper, costing	48 37
53 4/20 reams of golden envelope-paper, costing	139 51
481 16/20 reams of manila-paper, costing	1,341 28
118 11/20 reams of map-paper, costing	346 59
9 18/20 reams of bank-note paper, costing	75 49
3,305 sheets of bullet-patch paper, costing	49 45
19,880 sheets of artificial parchment, costing	278 87
25,205 sheets of bond-paper, costing	1,822 97
36,193 sheets of bristol-board, costing	3,697 51
16,160 sheets of card-board, costing	750 73
383 reams of plate-paper, costing	3,392 07
	52,203 23

Papers issued to the bindery for general use during the fiscal year ending June 30, 1885.

7 1/20 reams printing-paper, costing	$30 87
74 11/20 reams writing-paper, costing	252 92
16 reams manila-paper, costing	83 56
2 14/20 reams cover-paper, costing	150 69
0 sheets bullet-patch paper, costing	79
5 sheets bond-paper, costing	8 77
0 sheets card-board, costing	99
	528 59

PAPER ACCOUNT.

aper on hand June 30, 1877	$48,153 57
urchased July 1, 1877, to June 30, 1878	352,080 22
urchased July 1, 1878, to June 30, 1879	328,992 29
urchased July 1, 1879, to June 30, 1880	475,456 51
urchased July 1, 1880, to June 30, 1881	456,803 14
urchased July 1, 1881, to June 30, 1882	523,901 19
urchased July 1, 1882, to June 30, 1883	439,839 46
urchased July 1, 1883, to June 30, 1884	437,732 83
urchased July 1, 1884, to June 30, 1885	323,049 72
	3,386,008 93

The work completed and delivered within the same periods shows—

Amount consumed July 1, 1877, to June 30, 1878	$350,969
Amount consumed July 1, 1878, to June 30, 1879	344,761
Amount consumed July 1, 1879, to June 30, 1880	405,558
Amount consumed July 1, 1880, to June 30, 1881	492,802
Amount consumed July 1, 1881, to June 30, 1882	475,530
Amount consumed July 1, 1882, to June 30, 1883	478,833
Amount consumed July 1, 1883, to June 30, 1884	420,545
Amount consumed July 1, 1884, to June 30, 1885	354,175
On hand June 30, 1885	52,203
	3,375,380

NOTE.—It is not possible to arrive at an exact balance on this account, for the r son that great quantities of paper are continually going through the press on w not completed during the fiscal year, and which is not charged in above account.

No. 6.—*Statement showing the disbursements on account of the Congr sional Record for the fiscal year ending June* 30, 1885.

	Pay of employés:		
	July (earned in June)	$13,136 16	
	August (earned in July)	12,279 27	
	September (earned in August)	4,328 83	
	October (earned in September)	2,320 05	
	November (earned in October)	162 00	
	December (earned in November)	2,918 90	
	January (earned in December)	7,639 23	
	February (earned in January)	10,459 41	
	March (earned in February)	13,314 24	
	April (earned in March)	10,000 10	
	May (earned in April)	1,008 51	
	June (earned in May)	886 82	$78,453 5
	Material, &c.:		
4,000	reams printing-paper, 96 pounds, at $5.856	23,424 00	
111	reams and 3 quires printing-paper, 96 pounds, at $5.568	618 87	
94	reams manila-paper, at $2.67	250 98	
24	reams marble-paper, at $6.14	147 36	
31,500	pounds binder's boards, at 3.2 cents	1,008 00	
26,875	feet imitation Russia leather, at 18 cents	4,837 50	
20	dozen law-sheep, at $10	200 00	
$\frac{3}{12}$	dozen title-leather, at $10.75	1 79	
$\frac{2}{12}$	dozen title-leather, at $9.75	1 63	
1,125	yards crash, at 12 cents	135 00	
25	packs gold-leaf, at $6.49	162 25	
115	packs gold-leaf, at $6.40	736 00	
60	pounds egg-albumen, at 55 cents	33 00	
1,489	pounds glue, at 13½ cents	201 02	
6	barrels flour, at $5	30 00	
4	dozen sweet-oil, at 77 cents	3 08	
4,490	pounds ink, at 40 cents	1,796 00	
18	pounds sponge, at $2.05	36 90	
	Carried forward	33,623 38	78,453 5

	Brought forward	$33,623 38	$78,453 52
)	yards cotton, at 9¼ cents	96 52	
)	yards tape, at ½ cent	14 40	
1½	gallons benzine, at 8.2 cents	22 51	
½	gallons oil, at $1.20	109 80	
;	pounds potash, at 4.3 cents	6 23	
3	pounds roller-composition, at 45 cents	597 60	
)	pounds wire, at 24 cents	230 16	
.	pounds wire, at 50 cents	20 50	
?	pounds twine, at 31 cents	50 22	
)	pounds twine, at 9.1 cents	4 55	
?	pounds twine, at 17.4 cents	5 57	
3	pounds stereotype-metal, at 9.1 cents	2,049 14	
	Type	267 02	
3	job-galleys	13 50	
)	quoins, at $1 per hundred	8 00	
)	quoins, at 75 cents per hundred	3 75	
1½	dozen lye-brushes, at $3.25	4 33	
1½	dozen pick-brushes, at $1.90	2 53	
1	dozen dust-brushes	6 00	
½	dozen paste-brushes	4 50	
1	dozen chairs	21 00	
½	dozen stools	6 00	
1	bucket	1 80	
1	sprinkler	1 25	
4	sets castors	1 40	
8	Z brushes	4 80	
.7	shade-holders	3 74	
	Repairing armature	35 00	
	Engraving diagrams	48 50	
	Stationery	10 40	
	Boxing, &c	8 55	
	Compiling index	7,695 84	
	Sawdust	2 34	
	Ice	321 75	
	Coal	912 00	
	Gas	255 00	
	Wagon repairs	76 75	
	Harness repairs	32 75	
	Horseshoeing	25 25	
	Horse-feed	135 22	
			46,739 55
	Total		125,193 07

)TE.—The clerk in charge of Congressional Record accounts is paid out of the ap-
riation for "Salaries, Office of Public Printer."

No. 7.—*Statement showing the disbursements on account of lithographing and engraving (except Congressional Record) during the fiscal year ending June* 30, 1885.

1,900 copies of illustrations for Twelfth Annual Report of the Geological and Geographical Survey of the Territories	$10,256 00
15,500 copies of illustrations for Fourth Annual Report of the Director of the United States Geological Survey	2,780 00
4,900 copies of illustrations for Bulletin No. 8 of the United States Geological Survey	1,115 00
4,900 copies of illustrations for Irving's volume of the Reports of the United States Geological Survey	7,380 00
4,900 copies of illustrations for Gilbert's volume of the Reports of the United States Geological Survey	3,672 00
1,900 copies of illustrations for Marsh's volume of the Reports of the United States Geological Survey	874 00
4,900 copies of illustration for Whitford's volume of the Reports of the United States Geological Survey	1,538 50
4,900 copies of illustrations for Curtis's volume of the Reports of the United States Geological Survey	1,892 50
1,900 copies of illustrations for Monograph No. 8 of the United States Geological Survey	520 00
1,900 copies of illustrations for Monograph No. 2 of the United States Geological Survey	8,033 00
7,225 copies of 174, and 100 copies of 64 illustrations for Report of the Chief of Engineers for 1884	1,770 00
300 copies of illustrations for Report of the Quartermaster-General for 1883	16 00
6,450 copies of illustrations for Report of the Quartermaster-General for 1884	640 00
8,075 copies of 97, and 2,000 copies of 86 illustrations for Report of the Chief of Ordnance for 1884	645 00
11,900 copies of illustration for Consular Report No. 45	145 00
11,900 copies of illustration for Consular Report No. 48	75 00
2,275 copies of illustrations for Report Commissioners of the District of Columbia	770 00
45,725 copies of illustration for Congressional Directory	340 00
1,525 copies of illustration for Annual Report of the Marine Hospital Service for 1884	50 00
1,000 copies of illustrations for Annual Report of the National Board of Health for 1880	675 00
1,000 copies of illustrations for Annual Report of the National Board of Health for 1881	420 00
1,000 copies of illustrations for Annual Report of the National Board of Health for 1882	370 00
2,500 copies of illustrations for Report of Health Officer of the District of Columbia	455 00
10,950 copies of illustrations for Report of Director of the Mint for 1883.	306 00
51,900 copies of illustrations for Report of Bureau of Animal Industry for 1884	8,178 00
5,550 copies of illustration for Report of Commissioners of Soldiers' Home	45 00
1,000 copies of illustration for Report of Board of Visitors to Soldiers' Home	13 00
Carried forward	52,974 00

Brought forward	$52,974 00
00 copies of illustration for Bulletin No. 22, National Museum	60 00
00 copies of illustrations for Second Annual Report Bureau of Ethnology	1,730 00
00 copies of illustrations for Fourth Annual Report Bureau of Ethnology	5,228 00
50 copies of illustrations for Report Board of Visitors to West Point Military Academy	355 00
50 copies of illustrations for Report on Lamp and Mineral Oil for the Army	328 25
00 copies of 34, 500 copies of 27, and 100 copies of 2 illustrations for Report of United States Executive Departments at International Exhibition of 1876	145 20
00 copies of illustrations for Supplementary Report of Gun Foundry Board	100 00
75 copies of illustrations for List of Merchant Vessels for 1884	365 00
50 copies of illustrations for Telegraphic Determination of Longitude	60 00
00 copies of illustration for Request for Transportation	65 00
50 copies of illustration for Report of Governor of Washington Territory	774 00
00 copies of illustration for Report on Rust of the Orange	5 00
50 copies of illustrations for International Signal Code	280 00
50 copies of illustrations for Studies on Coast Survey of Spezia	30 00
50 copies of illustrations for Specifications of Lamps	45 00
00 copies of Form No. 105 for Signal Office	5 00
00 copies of illustrations for Report of Commissioner of Fish and Fisheries for 1883	300 00
50 copies of illustrations for Testimony on Indian Fisheries in California	125 00
00 copies of illustrations for Report of Commissioner of Agriculture for 1883	14 60
00 copies of illustrations for Report of Commissioner of Agriculture for 1884	40 87
50 copies of illustration for Bulletin No. 5, Department of Agriculture	612 50
00 copies of illustrations for Report on Yorktown Monument	330 00
00 copies of Form No. 104 for Signal Office	10 00
75 copies of illustrations for Naval Professional Papers No. 17	810 00
50 copies of illustrations for Professional Papers of Engineer Bureau	20 00
50 copies of illustrations for Professional Papers No. 15	478 00
50 copies of illustrations for Professional Papers No. 16	235 00
75 copies of illustration for Report of Commissioner of Navigation	100 00
50 copies of illustrations for Naval Tactics	270 00
25 copies of 54, and 1,850 copies of 8 illustrations for Report of Chief Signal Officer for 1883	1,000 00
00 copies of illustrations for American Ephemeris and Nautical Almanac for 1884	40 00
50 copies of illustrations for American Ephemeris and Nautical Almanac for 1885	50 00
25 copies of illustrations for American Ephemeris and Nautical Almanac for 1888	146 00
50 copies of illustrations for Signal Service Notes No. 15	935 00
Carried forward	68,066 42

Brought forward	$68,066 42
8,150 copies of illustrations for Report of Secretary of the Interior for 1884	786 00
2,500 copies of illustration for General Order No. 328 of Navy Department	25 00
6,920 copies of 32, 6,900 copies of 29, and 6,100 copies of 8 illustrations for Report of Secretary of the Navy for 1884	329 00
150 copies of 14,500 pages Specifications of Patents	21,750 00
15,125 copies of illustration for Rules and Practice of United States Patent Office	195 00
50 copies of illustrations for Testimony Relating to Indian Affairs	35 00
8,650 copies of illustration for Report of Commissioner of Indian Affairs	70 00
6,675 copies of illustration for Report of Board of Indian Commissioners	415 00
4,900 copies of illustrations for Report United States Coast and Geodetic Survey for 1883	1,198 50
30 copies of illustrations for Court of Claims Case No. 227	50 00
30 copies of illustrations for Court Claims Case No. 11433	22 00
30 copies of illustration for Court of Claims Case No. 13016	40 00
650 copies of illustrations for Petition of J. R. Haskell	115 00
40 copies of illustrations for Court of Claims Case, Hubbell *vs.* United States	50 00
1,925 copies each of 3 portraits for Memorial Addresses	123 89
2,565 copies of illustrations for Senate Ex. Doc. No. 5, first session Forty-eighth Congress	495 00
2,425 copies of illustrations for Senate Ex. Doc. No. 5, second session Forty-eighth Congress	100 00
4,825 copies of illustrations for Senate Ex. Doc. No. 13	285 00
1,925 copies of illustrations for Senate Ex. Doc. No. 17	550 00
1,925 copies of illustrations for Senate Ex. Doc. No. 20	20 00
2,325 copies of illustration for Senate Ex. Doc. No. 25	40 00
2,425 copies of illustration for Senate Ex. Doc. No. 26	270 00
1,925 copies of illustration for Senate Ex. Doc. No. 28	25 00
2,125 copies of illustrations for Senate Ex. Doc. No. 32	280 00
2,975 copies of illustration for Senate Ex. Doc. No. 40	105 00
2,125 copies of illustration for Senate Ex. Doc. No. 41	40 00
2,125 copies of illustration for Senate Ex. Doc. No. 42	45 00
1,925 copies of illustrations for Senate Ex. Doc. No. 50	546 12
1,925 copies of illustrations for Senate Ex. Doc. No. 82	275 00
2,125 copies of illustrations for Senate Ex. Doc. No. 87	70 00
2,125 copies of illustration for Senate Ex. Doc. No. 103	65 00
2,125 copies of illustrations for Senate Ex. Doc. No. 123	1,130 00
1,125 copies of illustration for Senate Ex. Doc. No. 192	65 00
1,675 copies of illustrations for Senate Ex. Doc. No. 198, first session Forty-eighth Congress	275 00
2,450 copies of illustrations for Senate Ex. Doc. No. 204, first session Forty-eighth Congress	945 00
6,425 copies of illustrations for Senate Mis. Doc. No. 69	60 00
6,425 copies of illustrations for Senate Mis. Doc. No. 110, first session Forty-eighth Congress	133 75
2,000 copies of illustration for Senate Report No. 902	166 00
2,025 copies of illustrations for Senate Report No. 981	210 00
2,125 copies of illustrations for Senate Report No. 1522	120 00
Carried forward	99,586 68

Brought forward	$99,586 68
2,125 copies of illustration for Senate Report No. 1571	271 00
12,100 copies of illustrations for House Ex. Doc. No. 7	650 00
2,125 copies of illustrations for House Ex. Doc. No. 11	165 00
1,925 copies of illustration for House Ex. Doc. No. 15	30 00
1,925 copies of illustration for House Ex. Doc. No. 16	30 00
2,125 copies of illustration for House Ex. Doc. No. 36	70 00
1,925 copies of illustration for House Ex. Doc. No. 41	20 00
2,925 copies of illustrations for House Ex. Doc. No. 43, first session Forty-eighth Congress	405 00
4,225 copies of illustrations for House Ex. Doc. No. 44, second session Forty-eighth Congress	235 00
9,925 copies of illustrations for House Ex. Doc. No. 54	85 00
2,125 copies of illustrations for House Ex. Doc. No. 56	185 00
2,125 copies of illustration for House Ex. Doc. No. 78	240 00
1,925 copies of illustration for House Ex. Doc. No. 87	65 00
2,125 copies of illustration for House Ex. Doc. No. 94	95 00
2,125 copies of illustration for House Ex. Doc. No. 103	32 00
2,125 copies of illustration for House Ex. Doc. No. 134	30 00
2,125 copies of illustration for House Ex. Doc. No. 147	40 00
2,125 copies of illustration for House Ex. Doc. No. 154	50 00
3,925 copies of illustrations for House Ex. Doc. No. 163, first session Forty-eighth Congress	516 00
1,125 copies of illustrations for House Ex. Doc. No. 169	70 00
2,125 copies of illustrations for House Ex. Doc. No. 205	90 00
2,125 copies of illustration for House Ex. Doc. No. 243	22 00
2,125 copies of illustration for House Ex. Doc. No. 259	140 00
3,450 copies of illustrations for House Ex. Doc. No. 267, second session Forty-eighth Congress	796 75
1,925 copies of illustrations for House Mis. Doc. No. 4	90 00
2,225 copies of illustration for House Mis. Doc. No. 8	90 00
2,075 copies of illustrations for House Mis. Doc. No. 58	180 00
1,925 copies of illustrations for House Mis. Doc. No. 59	45 00
2,125 copies of illustrations for House Mis. Doc. No. 61	35 00
3,825 copies of illustrations for House Report No. 1848	270 00
Engraving illustrations for Fifth Annual Report of Director of the United States Geological Survey	5,053 00
Engraving illustrations for Bulletin No. 5 of the United States Geological Survey	875 00
Engraving illustration for Bulletin No. 8 of the United States Geological Survey	80 00
Engraving illustrations for Bulletin No. 10 of the United States Geological Survey	1,195 00
Engraving illustrations for Bulletin No. 11 of the United States Geological Survey	311 50
Engraving illustrations for Bulletin No. 12 of the United States Geological Survey	198 00
Engraving illustrations for Bulletin No. 14 of the United States Geological Survey	196 00
Engraving illustrations for Bulletin No. 16 of the United States Geological Survey	495 00
Engraving illustrations for Bulletin No. 20 of the United States Geological Survey	120 00
Carried forward	113,152 93

Brought forward	$113,152 93
Engraving illustrations for Bulletin No. 21 of the United States Geological Survey	89 50
Engraving illustrations for Fountain's volume of Reports of the United States Geological Survey	1,150 00
Engraving illustrations for Volume 8, Reports of the United States Geological Survey	2,740 00
Engraving illustrations for Monograph XI of the United States Geological Survey	675 00
Drawing and engraving on stone ten topographical maps for General Geographical and Topographical Atlas of the United States	5,850 00
Engraving illustrations for Annual Report of the Chief of Engineers for 1884	28 00
Engraving illustrations for Annual Report of the Chief of Ordnance for 1884	171 00
Engraving illustrations for Naval Ordnance for Senate Committee on Naval Affairs	43 00
Engraving illustrations for Notes on Construction of Ordnance No. 27	10 00
Engraving illustrations for Notes on Construction of Ordnance No. 28	75 00
Engraving illustrations for Notes on Construction of Ordnance No. 30	17 00
Engraving illustrations for Ordnance Notes No. 351	33 00
Engraving illustrations for Consular Report No. 48	267 00
Engraving illustration for Consular Report No. 46	5 00
Engraving illustration for Consular Report No. 53	25 00
Altering illustration for Circular of Information No. 2	5 00
Engraving illustrations for Annual Report Marine Hospital Service for 1884	80 00
Engraving illustrations for Report Smithsonian Institution for 1883	230 00
Engraving illustrations for Report Smithsonian Institution for 1884	1,525 00
Engraving illustrations for Report Director of the Mint for 1883	53 00
Engraving illustrations for Proceedings National Museum for 1885	233 00
Engraving illustrations for Fourth Annual Report Bureau of Ethnology	5,126 40
Engraving illustration for Revised Bulletin No. 3, United States Entomological Commission	10 00
Engraving illustrations for Report on Life-Saving Service	2 00
Engraving illustrations for Target Record Books	31 00
Engraving illustrations for Special Report No. 7, Department of Agriculture	36 00
Engraving illustrations for Bulletin No. 5, Department of Agriculture	575 00
Engraving illustration for badges, dedication of Washington Monument	15 00
Engraving illustration for Annual Report Attorney-General for 1884	6 00
Engraving illustration for Surgical Report	20 00
Engraving illustration for Outline Map of the United States	9 00
Engraving illustration for Rules for Inspectors	4 00
Engraving illustration for Epitome of Tripler's Manual	8 00
Engraving illustrations for Observations of Solar Eclipse August 7, 1869	13 00
Engraving illustration for description of articles Coast Survey exhibit at New Orleans Exposition	1 50
Engraving illustrations for Report on Forestry	5 00
Engraving illustrations for Official Gazette, United States Patent Office	107 00
Engraving charts for Interior Department	31 00
Engraving illustrations for Circular of Information No. 2, Bureau of Education	2 00
Engraving illustration, fac-simile signature Commissioner of Pensions	2 50
Carried forward	132,461 83

Brought forward	$132,461 83
Engraving illustration for Report Commissioner of Education for 1884	11 00
Engraving illustration, seal for publications of the Department of the Interior	20 00
Engraving illustrations for Land Office Decisions	7 00
Engraving illustrations for Report Secretary of the Navy for 1884	414 00
Engraving illustration for Report Chief Signal Officer for 1883	120 00
Engraving illustration for Signal Service Notes No. 14	2 00
Engraving illustrations for Document on Naval Ordnance	3 00
Engraving illustrations for Naval Professional Papers No. 16	9 00
Engraving illustrations for Naval Professional Papers No. 17	224 00
Engraving illustrations for American Ephemeris and Nautical Almanac for 1888	52 50
Engraving illustrations for Astronomical Papers, American Ephemeris, volume 2	1 50
Engraving illustrations for Official Records War of the Rebellion	111 00
Engraving illustrations for Report on Food-Fishes and Fisheries of the United States	7,429 00
Engraving illustrations for Report Commissioner of Fish and Fisheries for 1883	920 00
Engraving illustration for Court of Claims, Case No. 16	7 00
Engraving illustration for Court of Claims, Case No. 47	8 00
Engraving illustration for Court of Claims, Case No. 13,616	45 00
Engraving illustration for Court of Claims, Case No. 13,781	10 00
Engraving illustration for Court of Claims, Case No. 14,401	5 00
Engraving illustrations for Hubbell *vs.* United States, in Court of Claims	5 00
Engraving illustrations for Senate Ex. Doc. No. 2, second session Forty-eighth Congress	360 00
Engraving illustrations for Senate Ex. Doc. No. 106	185 00
Engraving illustrations for Senate Ex. Doc. No. 198, first session Forty-eighth Congress	20 00
Engraving illustrations for Senate Ex. Doc. No. 204	250 00
Engraving illustrations for Senate Mis. Doc. No. 69	80 00
Engraving illustrations for Senate Mis. Doc. No. 110, first session Forty-eighth Congress	1,967 00
Engraving illustrations for House Ex. Doc. No. 44, second session Forty-eighth Congress	142 22
Engraving illustration for House Ex. Doc. No. 54	12 00
Engraving illustrations for House Ex. Doc. No. 64	15 00
Engraving illustrations for House Ex. Doc. No. 144	7 00
Engraving illustrations for House Ex. Doc. No. 152	9 00
Engraving illustration for House Ex. Doc. No. 267	3 00
Engraving illustrations for House Ex. Doc. No. 268	51 00
Engraving illustrations for House Report No. 1790, first session Forty-eighth Congress	18 00
Engraving illustrations for House Report No. 2546, second session Forty-eighth Congress	38 00
Total	145,692 05

No. 8.—*Statement showing the disbursements on account of printing Annual Report* (1883) *of Commissioner of Agriculture during the fiscal year ending June* 30, 1885.

Pay of employés:		
July (earned in June)	$4,388 08	
August (earned in July)	2,720 79	
September (earned in August)	73 63	
November (earned in September)	15 20	
December (earned in November)	144 93	
		$7,342 63
Material, &c.:		
705 pounds uncalendered printing-paper, 45 pounds, 24 by 38 inches, at 6.3 cents	44 41	
20 dozen spools machine-thread, at $1.75	35 00	
60 pounds twine, at 31 cents	18 60	
441½ pounds wire, at 24 cents	105 96	
Lithographing	2,316 93	
		2,520 90
Total		9,863 53

No. 9.—*Statement showing the disbursements on account of printing Annual Report* (1884) *of Commissioner of Agriculture during the fiscal year ending June* 30, 1885.

Pay of employés:		
December (earned in November)	$443 75	
January (earned in December	1,934 45	
February (earned in January)	2,029 57	
March (earned in February)	7,234 95	
April (earned in March)	22,652 55	
May (earned in April)	10,851 89	
June (earned in May)	8,900 86	
		$54,048 0
Material, &c.:		
316,7(1 pounds uncalendered printing-paper, 45 pounds, 24 by 38 inches, at 6.3 cents	19,956 14	
134,911 pounds uncalendered printing-paper, 45 pounds, 24 by 38 inches, at 5.7 cents	7,689 93	
400 reams uncalendered printing-paper, 45 pounds, 24 by 38 inches, at $2.736	1,094 40	
2,609 reams tinted printing-paper, 50 pounds, 24 by 38 inches, at $3.70	9,653 30	
600 reams tinted printing-paper, 50 pounds, 24 by 38 inches, at $3.40	2,040 00	
81,288 pounds map-paper, at 8.3 cents	6,746 90	
3,604 pounds plate-paper, at 8.3 cents	299 13	
527 reams tissue-paper, at 89 cents	469 03	
12 reams manila-paper, at $8.90	106 80	
30 reams hardware paper, at $3.90	117 00	
122,000 pounds binders' boards, at 3 cents	3,660 00	
Carried forward	51,832 63	54,048 0

	Brought forward	$51,832 63	$54,048 02
1,350	pieces binding cloth, at $4.00	5,400 00	
400	packs imitation gold leaf, at $1.30	520 00	
10,760	yards crash, at 5.8 cents	624 08	
1,447¼	yards cotton, at 6 cents	86 84	
2,002	pounds wire, at 24 cents	480 48	
204	pounds twine, at 31 cents	63 24	
298	pounds thread, at 66.6 cents	198 47	
45	dozen spools machine-thread, at $1.75	78 75	
1,577	pounds glue, at 13½ cents	212 89	
240	pounds orange shellac, at 26¼ cents	63 60	
10	barrels flour, at $5	50 00	
8	dozen sweet-oil, at 77 cents	6 16	
140½	gallons alcohol, at $2.248	315 83	
50	gallons benzine, at 8.2 cents	4 10	
5	pounds sponge, at $2.05	10 25	
839	pounds printing-ink, at 40 cents	335 60	
1,812	pounds printing-ink, at 30 cents	543 60	
Lithographing and engraving		9,990 13	
			70,816 65
	Total		124,864 67

No. 10.—*Statement showing the disbursements on account of publication of the Tenth Census Reports during the fiscal year ending June* 30, 1885.

	Pay of employés:		
	July (earned in June)	$3,724 84	
	August (earned in July)	8,145 61	
	September (earned in August)	2,816 66	
	October (earned in September)	4,370 77	
	November (earned in October)	3,625 58	
	December (earned in November)	2,484 26	
	January (earned in December)	4,977 07	
	February (earned in January)	7,814 03	
	March (earned in February)	5,440 11	
	April (earned in March)	1,213 76	
	May (earned in April)	1,901 57	
	June (earned in May)	2,251 58	
			$48,765 84
	Material, &c.:		
3,782	reams uncalendered printing-paper, 96 pounds, 38 by 48 inches, at $5.856	22,147 38	
583	reams uncalendered printing-paper, 96 pounds, 38 by 48 inches, at $5.568	3,246 14	
63	reams and 18 quires calendered printing-paper, 70 pounds, 24 by 38 inches, at $5.11	326 53	
79	reams cover-paper, 36 pounds, at $2.988	236 05	
53	reams and 2¾ quires plaid paper, at $9	478 17	
780	pounds plate-paper, at 12 cents	93 60	
8,492	pounds plate-paper, at 8.3 cents	704 84	
7,840	pounds map-paper, at 10.4 cents	815 36	
1,444	pounds map-paper, at 8.3 cents	119 86	
	Carried forward	28,167 93	48,765 84

	Brought forward	$28,167 93	$48,765 84
300	pieces binding-cloth, at $4.02	1,206 00	
50	pieces binding-cloth, at $4	200 00	
32,250	pounds binders' boards, at 2.9 cents	935 25	
62,250	pounds binders' boards, at 2.7 cents	1,680 75	
50	dozen law calf, at $30	1,500 00	
100	packs imitation gold leaf, at $1.30	130 00	
743¾	yards cotton, at 11.7 cents	1	
2,000	yards gray super, at 3.7 cents	74 00	
1,373¾	yards gray super, at 3.4 cents	46 71	
16,009	yards alpaca braid, at 1.2 cents	192 11	
297½	pounds thread, at 66.6 cents	198 13	
144	pounds twine, at 31 cents	44 64	
187	pounds rope for pressing-machines, at 11½ cents	21 50	
45	pounds orange shellac, at 26½ cents	11 92	
1,982	pounds printing-ink, at 60 cents	1,189 20	
1,773	pounds printing-ink, at 50 cents	886 50	
1,377	pounds printing-ink, at 40 cents	550 80	
1,015	pounds roller composition, at 45 cents	456 75	
1,256	pounds potash, at 4.3 cents	54 01	
10	pounds sponge, at $2.05	20 50	
101½	gallons benzine, at 8.5 cents	8 63	
824	gallons benzine, at 8.2 cents	67 57	
6	dozen lye-brushes, at $3.25	19 50	
Lithographing and engraving		17,596 40	
Boxing and cartage		5 50	
			55,351 31
	Total		104,117 15

No. 11.—*Statement showing the disbursements on account of removal and storage of certain property, Government Printing Office, during the fiscal year ending June* 30, 1885.

Rent	$2,440 00
Hauling	1,078 38
Total	3,518 38

No. 12.—*Statement showing the disbursements on account of repairs, Government Printing Office,* 1884, *during the fiscal year ending June* 30, 1885.

Advertising	$4 69

No. 13.—*Table showing a recapitulation of the actual expenditures on account of the printing, binding, engraving, lithographing, &c., of the Government of the United States for the year ending June* 30, 1885, *as executed at the Government Printing Office, and the appropriations out of which they were made.*

For salaries and contingent expenses in the Office of Public Printer	$17,963 77
For the public printing and binding	1,851,429 22
For paper for the public printing	299,006 85
Carried forward	2,168,399 84

Brought forward	$2,168,399 84
ıe Congressional Record	125,193 07
thographing and engraving	145,092 05
rinting Report of Commissioner of Agriculture, 1883	9,863 53
rinting Report of Commissioner of Agriculture, 1884	124,864 67
ublication of the Tenth Census Reports	104,117 15
›moval and storage of certain property	3,518 38
›pairs, Government Printing Office, 1884	4 69
	2,681,053 38

And they were made out of the following appropriations:

ies, Office of Public Printer, 1885	15,300 00
ngent expenses, Office of Public Printer, 1883*	2 70
ngent expenses, Office of Public Printer, 1884*	613 96
ngent expenses, Office of Public Printer, 1885	2,047 11
c printing and binding, 1882*	29 60
c printing and binding, 1883*	13,914 00
c printing and binding, 1884*	332,483 68
c printing and binding, 1885	2,074,293 91
ing Annual Report (1883) of Commissioner of Agriculture	9,863 53
ing Annual Report (1884) of Commissioner of Agriculture	124,864 67
cation Tenth Census Reports	104,117 15
›val and storage of certain property, Government Printing Office	3,518 38
irs, Government Printing Office, 1884	4 69
	2,681,053 38

ı.—*Table showing the persons with whom contracts were entered into (by direction of Joint Committee on Printing) for supplying the required quantities of the various ls of paper for the public printing from March* 1, 1885, *to February* 28, 1886.

ame of contractor.	Description of paper.	Size.	Weight per ream.	Quantity	Price.
	PRINTING-PAPER.	*Inches.*	*Lbs.*	*Reams.*	*Per pound.*
I. Singerly, Philadel-, Pa.	Best machine finish	24 by 38	48	35,000	5.7 cents.
house Brothers, Phila-hia, Pa.	do	do	48	5,000	5.7 cents.
. Singerly, Philadel-, Pa.	do	do	45	10,000	5.7 cents.
Do	do	38 by 48	96	2,500	5.8 cents.
house Brothers, Phila-hia, Pa.	do	do	96	2,500	5.8 cents.
I. Singerly, Philadel-, Pa.	do	Any size not enumerated above, and not exceeding 38 inches in width.	.....	1,000	5.9 cents.

ıese amounts were paid on liabilities incurred during the fiscal years named.

Paper for the public printing—Continued.

Name of contractor.	Description of paper.	Size.	Weight per ream.	Quantity	Price.
	PRINTING-PAPER—Cont'd.	*Inches.*	*Lbs.*	*Reams.*	*Per pound.*
F. W. McDowell, Philadelphia, Pa.	Sized and supercalendered.	24 by 38	48	5,000	6.8 cents.
Do	do	do	53	1,000	6.8 cents.
Do	do	38 by 48	96	1,000	6.8 cents.
Do	do	22 by 34	44	500	6.8 cents.
Do	do	24 by 38	70	2,000	6.8 cents.
Do	do	24 by 32	60	1,500	6.8 cents.
Do	do	Any size not enumerated above, and not exceeding 38 inches in width.		1,000	7 cents.
Moorehouse Brothers, Philadelphia, Pa.	do	24 by 32	45	6,000	6.7 cents.
Do	do	32 by 48	90	2,000	6.7 cents.
F. W. McDowell, Philadelphia, Pa.	Sized and supercalendered, white or tinted.	22¾ by 31½	50	2,000	6.8 cents.
Do	do	do	42	2,000	6.8 cents.
Do	do	do	40	1,000	6.8 cents.
Do	do	Any size not enumerated above, and not exceeding 32 inches in width.		1,000	7 cents.
Do	do	21½ by 29	40	1,000	6.8 cents.
Do	do	22 by 28½	40	500	6.8 cents.
Do	do	24 by 38	70	500	6.8 cents.
Do	do	do	50	1,500	6.8 cents.
Do	do	Any size not enumerated above, and not exceeding 28 inches in width.		1,000	7 cents.
	WRITING-PAPER, TO BE OF ANY REQUIRED WEIGHT.				
Megargee Brothers, Philadelphia, Pa.	White quarto-post	10 by 16		1,500	8.5 cents.
Alexander Balfour, Philadelphia, Pa.	Blue quarto-post	do		200	9.2 cents.
Megargee Brothers, Philadelphia, Pa.	White cap	13 by 16½ or 14 by 17.		2,000	8.5 cents.
Alexander Balfour, Philadelphia, Pa.	Laid or wove double-cap, of any required color or colors.	16½ by 26 or 17 by 28.		2,000	9.2 cents.
Megargee Brothers, Philadelphia, Pa.	White double-cap	do		7,500	8.4 cents.
Seymour Paper Company, New York, N. Y.	Blue double-cap	do		200	9.1 cents.
Megargee Brothers, Philadelphia, Pa.	White demy	16 by 20½		2,000	8.4 cents.
Alexander Balfour, Philadelphia, Pa.	Blue demy	do		200	9.2 cents.

Paper for the public printing—Continued.

ractor.	Description of paper.	Size.	Weight per ream.	Quantity	Price.
	WRITING-PAPER—Cont'd.	*Inches.*	*Lbs.*	*Reams.*	*Per pound.*
rs, Phila-	White double-demy	20½ by 32		5,000	8.8 cents.
	White folio-post	17 by 22		1,500	8.4 cents.
r, Philadel-	Blue folio-post	do		500	9.2 cents.
rs, Phila-	White double folio-post	22 by 34		2,500	8.4 cents.
r, Philadel-	Blue double folio-post	do		500	9.2 cents.
rs, Phila-	White medium	18 by 23		1,000	8.5 cents.
ur, Phila-	Blue medium	do		500	9.2 cents.
rs, Phila-	White royal	19 by 24		1,500	8.4 cents.
ur, Phila-	Blue royal	do		200	9.2 cents.
rs, Phila-	White super-royal	20 by 28		1,000	8.4 cents.
ur, Phila-	Blue super-royal	do		200	9.2 cents.
rs Phila-	White imperial	22½ by 31		1,500	8.4 cents.
ur, Phila-	Blue imperial	do		200	9.2 cents.
rs, Phila-	White, of any required size not enumerated above, and not exceeding 28 inches in width.			2,500	8.5 cents.
ur, Phila-	Colored, of any required size not enumerated above, and not exceeding 28 inches in width.			500	9.2 cents.
	Golden envelope	19 by 24	28	100	9.4 cents.
	COVER-PAPER.				
ers, Phila-	Any required color or colors.	20 by 25		1,500	7.8 cents.
	do	22½ by 32	50	200	7.8 cents.
	PLATE-PAPER.			*Pounds.*	
rs, Phila-	Sized or unsized, and of any required size, weight, or tint.			100,000	12 cents.
	MAP-PAPER.			*Reams.*	
ee & Co., a.	Sized and super-calendered, of such size and weight as may be required.			5,000	10.4 cents.
	MANILA-PAPER.				
rs, Phila-	Any required size and weight.			500	6.3 cents.
th, Boston.	do			500	6.3 cents.

Paper for the public printing—Continued.

Name of contractor.	Description of paper.	Size.	Weight per ream.	Quantity	Price.
	TISSUE-PAPER.	*Inches.*	*Lbs.*	*Reams.*	*Per ream.*
Bulkley, Raiguel & Co., Philadelphia, Pa.	.....	20 by 30.....	.....	600	84 cents.
	GLAZED BOND-PAPER.			*Sheets.*	*Per pound.*
A. G. Elliot & Co., Philadelphia, Pa.	Of such size and weight as may be required, not exceeding 24 by 38 inches.	.....	.....	900,000	20.8 cents.
	ARTIFICIAL PARCHMENT.				
Do.....	Any required size and weight.	.....	.....	65,000	21 cents.
	PARCHMENT DEED-PAPER.				
Easton & Rupp, Washington, D. C.	Any required size and weight.	.....	.....	50,000	18.4 cents.
	BRISTOL AND CARD BOARD.				*Per sheet.*
A. G. Elliot & Co., Philadelphia, Pa.	Thin bristol-board.....	22 by 28.....	120	75,000	2.2 cents.
Do.....	Thick bristol-board.....	....do	140	75,000	2.5 cents.
Bulkley, Raiguel & Co., Philadelphia, Pa.	Heavy railroad-board.....	22½ by 28½.....	280	10,000	4.1 cents.
S. Trier & Son, New York, N. Y.	White China-board	....do	210	10,000	3.5 cents.
A. G. Elliot & Co., Philadelphia, Pa.	Colored card-board	....do	210	6,666	3.9 cents.
Bulkley, Raiguel & Co., Philadelphia, Pa.	.....do	....do	210	6,666	3.9 cents.
S. Trier & Son, New York, N. Y.	.....do	....do	210	6,667	3.9 cents.
Woolworth & Graham, New York, N. Y.	Pearl-gray bristol-board ..	21 by 31.....	130	150,000	1.7 cents.
Fairchild Paper Company, Boston, Mass.	.....do	....do	130	150,000	1.7 cents.
Woolworth & Graham, New York, N. Y.	Melon bristol-board.....	....do	130	300,000	1.8 cents.
Alexander Balfour, Philadelphia, Pa.	Golden bristol-board.....	....do	130	10,000	1.9 cents.
Woolworth & Graham, New York, N. Y.	Yellow bristol-board	....do	130	250,000	1.8 cents.
					Per pound.
Do.....	Colored bristol-board, of any required size and weight.	.....	.....	50,000	8 cents.

15.—*Table showing the allotments and the approximate cost of the work executed for the various Executive Departments for the fiscal year ending June* 30, 1885.

Department.	Amount.
.....	$63, 000 00
.....	167, 500 00
ior	392, 000 00
ıury	270, 000 00
Office	180, 000 00
:ulture	22, 500 00
.....	15, 800 00
ɔme Court of the United States	18, 000 00
ɔme Court of the District of Columbia	1, 350 00
ɔd States Court of Claims	13, 000 00
rtment of Justice	9, 000 00
ıry of Congress	13, 680 00

ınts (in addition to the above) deposited in the Treasury to the credit of the public printing and binding, by the Departments named, respectively.

· Department (for Nautical Almanac and Miscellaneous)	$1, 500 45
lor Department (for Census Work and Miscellaneous)	631 44
rtment of Agriculture (for miscellaneous)	308 41
ɔnal Board of Health	7 20

RECAPITULATION.

Department	Amount available.	Approximated cost of work delivered.
.....	$64, 500 45	$64, 494 76
.....	187, 500 00	158, 823 84
lor	392, 631 44	362, 084 17
ıury	270, 000 00	248, 149 19
Office	180, 000 00	169, 212 42
:ulture	22, 808 41	22, 803 49
.....	15, 800 00	13, 759 10
ɔme Court of the United States	18, 000 00	2, 784 04
ɔme Court of the District of Columbia	1, 350 00	970 22
t of Claims	13, 000 00	12, 743 88
ce	9, 000 00	8, 679 22
ıry of Congress	13, 680 00	11, 126 11
ɔnal Board of Health	7 20	37 50
ı of Public Printer	5, 375 19	5, 375 19
Total	1, 193, 652 69	1, 081, 043 13

No. 16.—*Table showing the amount of work executed during the fiscal year ending June 30, 1885.*

EXECUTIVE DEPARTMENTS.

Department.	Blanks, envelopes, &c.	Pamphlets and documents.		Blank books.	Miscellaneous binding.	Memorandum blocks.
		Number of copies.	Number of pages.			
Treasury	36, 707, 804	582, 593	40, 848	132, 662	7, 531	60, 145
War	6, 445, 496	1, 753, 279	34, 056	38, 480	20, 316	20, 385
Navy	1, 179, 920	80, 345	9, 871	5, 318	7, 165	2, 225
Interior	26, 475, 979	815, 471	101, 001	15, 435	14, 641	35, 068
Post-Office	72, 813, 584	75, 858	6, 832	99, 828	2, 792	13, 234
Agriculture	3, 767, 042	202, 312	3, 124	39	1, 134	.....
State	448, 514	22, 277	5, 886	123	1, 291	.....
Judiciary	244, 084	37, 477	15, 046	245	374	310
Total	148, 082, 423	3, 569, 612	216, 664	292, 130	55, 244	131, 963

FOR CONGRESS.

Congress	.....	2, 025, 723	47, 294	.....	.....	.....
Senate	3, 370, 757	3, 526, 787	19, 091	119	5, 657	2, 508
House	7, 179, 959	3, 240, 911	43, 864	140	6, 691	4, 852
Library of Congress	278, 725	8, 000	8	14	3, 684	.....
Public Printer	678, 893	1, 600	128	206	17	1, 382
Private orders	.....	240, 707	7, 990	.....	.....	.....
Total	11, 508, 334	9, 043, 728	118, 375	479	16, 049	8, 737

RECAPITULATION.

Executive Departments	148, 082, 423	3, 569, 612	216, 664	292, 130	55, 244	131, 963
Congress	11, 508, 334	9, 043, 728	118, 375	479	16, 049	8, 737
Total	159, 590, 757	12, 613, 340	335, 039	292, 609	71, 293	140, 719

The following recapitulation exhibits the amount of work executed during the fiscal years ending June 30, 1878–'79–'80–'81–'82–'83–'84:

1878.

	Blanks, envelopes, &c.	Pamphlets and documents.		Blank books.	Miscellaneous binding.
		Number of copies.	Number of pages.		
Executive Departments	69, 388, 336	949, 761	120, 797	120, 150	31, 631
Congress	5, 569, 317	17, 908, 510	114, 100	580	12, 474
Total	74, 957, 653	18, 858, 271	234, 897	120, 730	44, 105

1879.

Executive Departments	98, 097, 933	3, 451, 086	119, 201	246, 564	16, 289
Congress	7, 714, 653	15, 250, 312	110, 749	677	9, 987
Total	105, 812, 586	18, 701, 398	229, 950	247, 241	26, 276

	Blanks, envelopes, &c.	Pamphlets and documents.		Blank books.	Miscellaneous binding.	Memorandum blocks.
		Number of copies.	Number of pages.			
1880.						
Executive Departments	122, 713, 897	4, 331, 299	122, 888	340, 708	27, 794	311, 744
Congress	8, 553, 575	12, 802, 500	108, 722	728	11, 344	17, 265
Total	131, 267, 472	17, 133, 799	231, 610	341, 436	39, 138	329, 009
1881.						
Executive Departments	210, 162, 624	4, 554, 793	461, 104	292, 748	28, 374	284, 046
Congress	12, 001, 632	5, 185, 691	75, 514	599	11, 050	1, 962
Total	222, 164, 256	9, 740, 484	531, 618	293, 347	39, 424	286, 008
1882.						
Executive Departments	124, 297, 282	8, 166, 333	502, 801	251, 399	41, 664	100, 702
Congress	6, 375, 973	18, 578, 443	193, 981	2, 207	52, 520	3, 851
Total	130, 673, 255	27, 044, 776	696, 782	253, 606	94, 184	104, 553
1883.						
Executive Departments	207, 861, 040	6, 063, 788	366, 289	324, 651	67, 787	151, 253
Congress	8, 587, 589	6, 831, 158	160, 852	1, 515	11, 450	7, 877
Total	216, 448, 629	12, 894, 946	527, 141	326, 166	79, 237	159, 130
1884.						
Executive Departments	134, 413, 188	3, 463, 281	247, 311	326, 687	48, 896	152, 924
Congress	11, 609, 738	19, 938, 963	183, 148	1, 792	16, 825	15, 023
Total	146, 022, 926	23, 402, 244	430, 459	328, 479	65, 721	167, 947

No. 17.—*Table showing the disbursements of the Office of the Public Printer during the years* 1863 *to* 1876, *inclusive, ending September* 30, *each year, for the nine months ending June* 30, 1877, *and for the fiscal years ending June* 30, 1878, 1879, 1880, 1881, 1882, 1883, 1884, *and* 1885.

Year.	Office of the Public Printer.	Public printing.	Paper for the public printing.	Lithographing and engraving.	Public binding.	Mapping for the United States Supreme Court.	Congressional Record.	Printing report of impeachment trial of W. W. Belknap.	Printing Reports of the Commissioner of Agriculture for 1874 and 1875.	Printing Report of the Commissioner of Agriculture for 1876.	Catalogue, Library of Congress.
1863	$13,210 97	$285,664 80	$830,802 06	$64,126 38	$223,945 80	.....	.....	.....	.....	.....	.....
1864	14,148 87	328,249 34	713,481 16	75,391 79	302,947 19	$9,415 75	.....	.....	.....	.....	.....
1865	14,869 54	439,856 14	1,258,959 51	96,907 04	387,288 09	2,279 00	.....	.....	.....	.....	.....
1866	13,545 10	400,541 00	896,929 71	112,272 05	445,009 57	1,081 92	.....	.....	.....	.....	.....
1867	13,769 43	452,998 24	635,106 09	108,624 75	386,203 98	2,515 92	.....	.....	.....	.....	.....
1868	13,941 98	454,502 56	385,440 97	105,356 77	346,723 82	3,102 75	.....	.....	.....	.....	.....
1869	16,506 20	559,218 56	399,798 51	145,370 51	385,219 41	1,037 50	.....	.....	.....	.....	.....
1870	14,188 44	632,690 82	418,974 21	64,929 21	477,603 74	1,473 50	.....	.....	.....	.....	.....
1871	12,514 00	615,021 41	483,108 50	16,270 67	508,442 53	1,421 70	.....	.....	.....	.....	.....
1872	12,514 00	705,596 21	498,989 25	42,257 90	541,663 16	1,331 75	.....	.....	.....	.....	.....
1873	12,864 00	741,673 62	536,968 21	12,960 30	604,249 05	2,821 00	.....	.....	.....	.....	.....
1874	14,214 00	791,941 35	381,426 07	19,899 87	549,078 20	1,209 97	.....	.....	.....	.....	.....
1875	16,617 24	695,097 70	387,471 26	11,879 24	478,071 60	725 62	$88,959 80	.....	.....	.....	.....
1876	15,956 29	745,147 05	249,285 54	13,952 91	402,069 72	2,858 74	188,198 84	.....	.....	.....	.....
1877	10,939 73	536,458 87	227,170 03	5,124 94	312,780 78	.....	85,476 49	$5,028 59	.....	.....	.....
1878	15,795 97	693,021 12	279,215 42	15,673 49	405,752 55	.....	125,173 41	.....	$16,613 14	$87,456 43	.....
1879	15,485 69	778,338 26	301,603 60	52,019 11	422,242 24	.....	140,205 71	.....	.....	.....	$3,725 62
1880	15,180 27	852,125 04	435,730 95	140,507 06	455,593 39	.....	130,741 29	.....	.....	.....	3,215 74
1881	15,662 55	885,607 39	433,549 37	219,984 98	539,430 91	.....	117,765 44	.....	.....	.....	3,233 63
1882	16,051 91	1,105,104 23	492,527 80	274,151 99	580,510 33	.....	150,902 19	.....	.....	.....	2,470 16
1883	16,446 71	1,189,725 64	*389,705 43	154,344 10	627,520 49	.....	193,828 80	.....	.....	.....	835 52
1884	16,037 98	†1,872,049 19	*410,101 27	150,228 85	.....	.....	123,645 48	.....	.....	.....	.....
1885	17,963 77	†1,851,429 22	*299,006 85	145,092 05	.....	.....	125,193 07	.....	.....	.....	.....

* This total does not include paper purchased for Agricultural Report, as in previous years, Congress having made a separate appropriation therefor.

Year.	Fire-escape ladders.	Telephone connection.	Fire extinguishers.	Index to Centennial Reports.	Hayden's Atlas of Colorado.	Printing Report of Committee on Transportation Routes to the Seaboard.	Printing Annual Report (1881) of Commissioner of Agriculture.	Publication of the Tenth Census Reports.	Removal and storage of certain property, Government Printing Office.	Printing Annual Report (1883) of Commissioner of Agriculture.	Printing Annual Report (1884) of Commissioner of Agriculture.	Repairs, Government Printing Office, 1884.	Total.
1863													$1,417,750 01
1864													1,443,634 10
1865													2,200,159 32
1866													1,869,379 35
1867													1,599,218 41
1868													1,309,068 85
1869													1,507,240 69
1870													1,609,859 92
1871													1,636,778 81
1872													1,802,352 27
1873													1,911,536 18
1874													1,757,769 46
1875													1,678,822 46
1876													1,617,469 09
1877													1,182,979 43
1878													1,638,701 53
1879	$2,244 00	$147 86											1,716,012 09
1880	503 30	153 84	$1,000 00										2,034,750 88
1881		405 00		$300 00									2,215,939 27
1882		58 25			$10,500 00	$2,879 22							2,635,159 08
1883							$154,634 65	$134,006 35	$726 73				2,861,274 42
1884							24,455 99	293,009 12	1,823 86	$89,438 54		$12,360 17	2,994,050 45
1885								104,117 15	3,518 38	9,863 53	$124,864 67	4 69	2,681,053 38

No. 18.—*Statement showing the unexpended balances of appropriations June 30, 1884; the appropriations for the fiscal year ending June 30, 1885; the amounts drawn during the year, and the unexpended balances of appropriations at the end of the year.*

Appropriations.	Balances of appropriations at commencement of fiscal year 1884-'85.	Appropriations for fiscal year 1884-'85.	Amounts added for printing, and sales of waste paper, repayments, &c., during fiscal year 1884-'85.	Aggregate amount available.	Amount of requisitions and paper certificates drawn during fiscal year 1884-'85	Balances of appropriations at end of fiscal year 1884-'85.
Salaries, Office of Public Printer, 1885		$15,300 00		$15,300 00	$15,300 00	
Contingent expenses, Office of Public Printer, 1883	$2 05		$0 65	2 70	2 70	
Contingent expenses, Office of Public Printer, 1884	1,000 00			1,000 00	128 16	$871 84
Contingent expenses, Office of Public Printer, 1885		3,000 00		3,000 00	2,000 00	1,000 00
Public Printing and Binding, 1882	61,683 71			61,683 71	29 60	61,654 11
Public Printing and Binding, 1883	34,400 70			34,400 70	10,102 84	24,297 86
Public Printing and Binding, 1884	306,104 32		16,739 66	322,843 98	*311,930 99	10,912 99
Public Printing and Binding, 1885		2,250,000 00	†172,275 10	2,422,275 10	2,135,440 28	286,834 82
Printing Annual Report (1883) of Commissioner of Agriculture	127,772 85			127,772 85	7,074 92	120,697 93
Printing Annual Report (1884) of Commissioner of Agriculture		200,000 00		200,000 00	127,948 83	72,051 17
Publication of the Tenth Census Reports	244,289 24			244,289 24	97,689 76	146,599 48
Removal and storage of certain property, Government Printing Office	2,000 00		3,000 00	5,000 00	3,400 00	1,600 00
Repairs, Government Printing Office, 1884	139 83			139 83	4 69	135 14

* Includes transfer of $30,000 to credit of "Public Printing and Binding, 1885."

† Includes $30,000 transferred from "Public Printing and Binding, 1884."

). 19.—*Table showing the number and distribution of the bound volumes of the Congressional Record for the second session of the Forty-eighth Congress.*

	Volumes.
elivered to Senate folding-room	9,952
elivered to House folding-room	16,124
elivered to House library	400
elivered to Library of Congress	208
elivered to officers of the House	36
elivered to justices and officers of the Supreme Court of the United States	56
elivered to Official Reporter of the Senate	20
elivered to State and Territorial libraries	200
n hand	604
Total	27,600

The number of copies of the Record authorized by law to be printed and bound is follows:

or Congress	10,675
or Library of Congress	52
or officers of the House	9
or Official Reporter of the Senate	5
or distribution to each State and Territorial library	50
r justices and officers of the Supreme Court of the United States	14
Total	10,805

Of the copies authorized by law to be printed and bound for Congress, 4,156 were ivered unbound upon orders of members of Congress.

The receipts on account of Congressional Record for the fiscal year ending June 30, 5, were as follows:

om sales of Record	$1,604 27
om sales of paper shavings (estimated)	526 62
e amount received for speeches printed from matter contained in the Record	7,528 45
Total	9,659 34

This sum has been deposited in the United States Treasury.

No. 20.—*Statement showing the number of persons employed in the public printing and binding (except Congressional Record) during the fiscal year ending June 30, 1885, with the length of time each has been employed and the amount each has received.*

PUBLIC PRINTING.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
H. T. Brian			$2,100 00	James H. Roberts	365		$730 00
J. M. A. Spottswood	313		1,799 75	W. E. Wise	212		424 00
D. W. Beach	313		1,669 35	Harry McGowan	313		469 50
J. M. Maloney	313		1,669 35	James M. Toy	209	221	473 25
W. H. Hickman	45	605	542 50	J. H. Fletcher		2,577	1,174 30
M. C. Foss		3,614	1,915 42	George M. Johnston		1,260	630 00
William Barnum		2,714	1,514 11	J. M. Craig		2,317	1,158 50
C. E. Etchberger		2,760	1,462 79	H. F. J. Drake		2,723	1,361 50
M. H. Kendig		1,123	531 36	C. F. Gilmore		2,291	1,145 50
J. Osborne		2,734	1,449 02	H. W. Gray		2,977	1,488 50
Ed. M. Spedden		1,480	818 72	F. C. Kemon		2,407	1,124 00
F. U. Stitt		112	62 72	W. McFarlane		2,792	1,396 00
C. M. Robinson		2,853	1,654 74	M. R. Woodward		2,996	1,539 22
Sidney T. Bates		2,504	1,327 12	F. M. Dodge		648	291 00
A. F. Bloomer		2,342	1,241 26	A. E. Riddle		2,374	1,046 43
Henry N. Boernstein		2,413	1,278 89	M. Brosnahan		2,718	1,223 10
John H. Boner		2,534	1,343 02	J. S. Burnside		2,914	1,311 30
George Burklin		2,440	1,293 20	C. M. Cyphers		1,022	411 00
A. T. Cavis		1,717	910 01	A. F. Randolph		2,734	1,230 30
W. F. Chase		2,948	1,562 44	C. W. Schell		2,535	1,119 50
John F. Connolly		2,456	1,301 68	O. Shaw		2,740	1,166 50
A. H. S. Davis		711	376 83	P. H. Smith		2,415	1,086 75
W. W. Deloe		2,597	1,376 41	T. J. Southworth		2,635	1,185 75
Benjamin Drew		2,106	1,116 18	G. H. Ackerman		2,185	874 00
W. F. Dunn		1,016	479 20	A. J. Alden		2,426	970 40
H. All Foresman		1,990	1,054 70	C. J. Alexander		2,573	1,196 70
I. Fuller		2,399	1,271 47	A. G. Allison		1,354	541 60
John Furlong		1,264	696 93	John Armstrong		1,064	425 60
George Gregory		475	251 75	Mary E. Ashby		2,312	924 80
C. S. Myers		1,244	659 32	W. S. Baker		392	156 80
M. Noyes		1,067	565 51	John Baltzell		1,933	773 30
Charles W. Otis		2,189	1,160 17	M. Barringer		2,612	1,044 80
S. J. Phillips		2,613	1,384 89	B. F. Barrows		2,172	868 80
W. R. Ramsey		2,422	1,283 66	W. H. Bawden		364	145 60
J. A. Scott		2,347	1,243 91	B. H. Baxter		2,587	1,034 80
J. L. Slentz		1,718	910 54	Frank A. Baxter		2,552	1,020 80
F. B. Stitt		2,027	1,074 31	Seward Beall		509	203 60
John W. Thomas		1,001	530 53	Alex. P. Beatty		1,660	664 00
H. W. Vail		1,867	989 51	W. O. Begley		2,760	1,104 00
C. A. Waterman		2,036	1,397 08	Edwin M. Blake		2,350	941 20
E. M. Wheat		2,152	1,140 56	William H. Bosley		542	216 80
I. W. Youngblood		448	237 44	John P. Boss		2,630	1,052 00
O. F. Dunlap		2,513	1,028 70	Wallace Brewer		2,419	967 60
G. H. Engelman		2,555	1,022 00	W. H. Brock		2,271	908 40
William Flinn		2,585	1,034 00	C. P. Brown		2,526	1,010 40
W. J. Fowler		902	360 80	W. S. Brooks		1,038	420 00
A. S. Griggs		2,600	1,040 00	S. McL. Byington		1,519	607 60
F. H. Hall		234	93 60	Alexander Calhoun		1,843	737 20
J. N. Hall		2,131	852 40	W. P. Chew		2,532	1,012 80
D. M. Hamlin		351	140 40	J. F. Chipley		2,149	859 60
W. H. Harrison		2,390	956 00	R. F. Chisolm		2,324	929 60
George E. House		2,790	1,116 00	J. B. Clark		2,436	974 40
Rémy Lefranc		2,110	844 00	Joseph S. Clarke		2,253	901 20
Thomas McCrea		1,617	646 80	Richard W. Claxton		469	187 60
H. A. McDonald		72	28 80	John C. Cobeane		2,250	900 00
James W. Richards		68	27 20	Al. Cottle		703	281 20
John W. Shotwell		2,040	816 00	Geo. W. Cox		2,294	917 60
G. Watkins Warfield		680	272 00	E. C. Crump		2,574	1,029 60
B. M. Winters		2,260	904 00	S. M. Davis		2,529	1,011 60
John Larcombe	313		2,003 20	H. L. Davison		2,503	1,001 20
W. M. Chollar			1,600 00	H. B. Denny		2,847	1,138 80
H. C. Tullis	186		992 01	W. H. Dexter		2,504	1,001 60
E. L. Richmond	313		1,565 00	Carrie C. Dickerson		2,090	839 60
David Nicholson	313		1,408 50	Joseph Dierken		2,324	929 60
M. W. Mitchell	313		1,408 50	D. R. Doyle		536	214 40
A. A. Allison	313		1,252 00	W. H. Duling		1,116	446 40
W. L. Crounse	313		1,252 00	Geo. E. Dummer		2,267	906 80
A. H. Post	313		1,252 00	John F. Dunbar		2,549	1,019 60
H. K. Collins	313		1,212 50	Otis S. Eastman		949	379 60
W. A. Smith	205		820 00	C. A. Edelen		2,542	1,016 80
D. H. Castello	313		1,001 60	Will M. Edmunds		2,344	937 60
J. H. Butcher	313		939 00	C. P. Evans		2,449	979 60

No. 20.—*Persons employed in the public printing, &c*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
Evans		1,861	$744 40	Henry A. Peed		342	$136 80
vans		2,435	974 00	L. Petrie		2,505	1,002 00
ve		2,449	979 60	A. S. Pettit		429	171 60
Fallon		2,250	900 00	W. L. Pierce		2,407	962 80
rrington		196	78 40	James H. Platt		2,501	1,000 40
Fennell		1,948	779 20	Lloyd Prather, jr		1,959	783 60
'errier		2,483	993 20	A. B. Proctor		2,502	1,000 80
. Fisher		2,479	991 60	J. C. Quinn		2,370	948 00
Floyd		1,463	585 20	William F. Reed		1,807	722 80
ranklin		2,388	955 20	T. S. Rice		1,997	798 80
Gilmore		88	35 20	Augustus L. Roberts		1,884	753 60
ass		2,097	838 80	Hattie E. Robinson		2,262	904 80
lenn		2,504	1,001 60	Franklin Rogers		2,074	829 60
raut		2,162	864 80	Zidon E. Ross		2,034	813 60
reene		1,087	434 80	T. G. Ruth		878	351 20
Greenwood		1,912	764 80	Dan L. Sansom		2,308	923 20
iffin		2,349	939 60	G. W. Sargent		2,586	1,034 40
Hall		1,960	784 00	James F. Scaggs		2,186	874 40
illeck		2,448	979 20	W. L. Schmalhoff		635	254 00
ndly		2,123	849 20	J. H. Schoepf		268	107 20
arding		2,661	1,064 40	W. H. Sealey		2,317	926 80
Henry		1,917	766 80	William C. Sefton		2,488	995 20
lenshaw		2,538	1,015 20	R. O Shaut		430	172 00
ring		2,552	1,020 80	J. W. Sherman		2,601	1,040 40
erman		2,225	890 00	John C. Shirk		2,661	1,064 40
ron		2,219	929 85	H. L Shomo		230	92 00
Higgins		2,574	1,029 60	I. Simmonds		2,759	1,103 60
L. Holden		2,314	925 60	J. D. Simmons		1,965	786 00
nan		2,209	883 60	Robert F. Simms		901	360 40
Howard		2,141	856 40	T. S. Slentz		2,682	1,072 80
Howard		1,723	689 20	E. C. Smith		2,106	842 40
Hughes		86	34 40	J. M. Smith		2,429	971 60
I. Huso		1,212	484 80	Charles Spencer		2,517	1,006 80
tchison		2,370	948 00	M. V. B. Stevens		2,601	1,040 40
E. Ingalls		1,693	677 20	A. Stiarwalt, jr		2,018	807 20
et A. Irwin		2,296	918 40	H. C. Surguy		2,726	1,090 40
Jack		1,148	459 20	W. H. Sweeney		1,966	786 40
hnson		2,486	994 40	A. H. Taylor		1,738	695 20
hnson		2,268	907 20	A. W. Tebbetts		1,743	697 20
hlert		1,326	530 40	E. H. Thomas		1,979	791 60
iser		2,644	1,057 60	C. P. Thompson		2,264	905 60
Kane		2,615	1,046 00	D. I. Towers		1,612	644 80
err, jr		2,433	973 20	Andrew Turnbull		1,796	718 40
ahy		2,318	927 20	S. R. Wall		2,159	863 60
H. Leeds		2,821	1,184 30	F. B. Wallace		1,070	454 65
Lewis		475	190 00	D. S. Walton		2,203	881 20
iggett		2,162	864 80	A. L. Watson		2,539	1,015 60
gan		2,275	910 00	W. S. Waudby		1,934	773 60
wdermilk		1,755	702 00	Henry Webb		2,271	908 40
Lustig		2,610	1,044 00	John Weber		1,740	696 00
ace		2,676	1,070 40	Samuel Wehrly		2,497	998 80
B. Mahan		528	211 20	Addington D. Welch		44	17 60
B. Major		2,287	914 80	C. K. Weller		2,713	1,085 20
ttingly		2,432	1,190 03	Theodore P. White		2,105	842 00
cArdle		359	143 60	E. S. Wiler		2,366	946 40
McCallum		1,097	438 80	R. J. Wilson		2,130	852 00
cCormick		2,100	840 00	John P. Wilver		543	217 20
McDermot		2,744	1,097 60	W. V. Winans		2,427	970 80
lfresh		1,654	661 60	Lothrop Withington		111	44 40
H. McFadden		2,131	852 40	L. Woodward		2,373	949 20
Grath		2,208	883 20	B. C. Wright		1,839	735 60
ahon		2,762	1,104 80	Charles Wright		1,278	547 20
elly		1,008	410 20	W. Young		2,458	983 20
cPherson		2,453	981 20	John A. Behrle		1,354	169 24
W. Metzgar		2,310	924 00	John H. Cook		1,273	159 10
nor		1,946	778 40	Eugene Langley		1,200	149 99
loss		2,230	892 00	G. M. McFarland		997	124 60
ulden		479	191 60	David Moore		1,844	230 48
E. Mullan		2,421	964 40	J. W. F. Smith		153	19 12
V. Murray		2,190	876 00	E. W. Smith		1,616	201 98
yers		2,446	978 40	Bernardine Smith		777	97 12
H. Norton		2,238	948 40	William Skeen		2,100	262 48
lothnagel		2,229	1,074 77	Gustave Warnke		1,861	232 61
erley		2,402	960 80	George E. Patton	313		1,460 65
'Rourke		2,045	818 00	Robert Wilson	313		939 00
atterson		2,302	920 80	D. G. Myers		2,496	468 00
atterson		2,475	990 00	William I. Ryan		2,496	486 31

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days	Hours.			Days.	Hours.	
W. H. Ayars		25	$12 00	Nelson F. Twing		1,227	$490 80
George W. Banks		2,491	622 75	H. C. Underwood		2,256	903 40
John Buckman		2,930	732 50	Will Way		2,427	970 80
Stephen Caldwell		1,036	263 95	John H. Whitaker		391	156 40
Robert Clark		2,449	612 25	Fillmore Donaldson		2,482	578 55
William Crawford		2,824	706 00	T. P. Woodward		2,349	387 25
Edward F. Evans		2,726	511 12	R. E. Beall, jr		718	143 60
H. S. Flynn		2,476	464 24	Martin N. Evans		2,264	450 53
John F. Gates		72	18 00	J. Howard Fishback		1,980	377 30
Amos Irving		2,799	699 75	James G. Woodward		2,325	399 77
James Jackson		2,812	703 00	J. H. Burch, jr		1,705	220 44
Thomas Kearney		2,790	697 50	Richard McNichols		347	86 75
G. L. Milton		2,771	692 75	Samuel Robinson		2,640	660 00
J. H. B. Smallwood		2,636	659 00	W. M. Thomas		1,074	268 50
John F. Swiggard	104	572	351 00	G. W. Cox		1,857	309 51
Emanuel Thomas		2,872	718 00	Exum M. Hussey		112	18 67
John Waller		2,175	543 75	Wm. H. Miller	313		1,799 75
C. H. Wilson		3,020	755 00	E. T. Barrett		2,431	1,288 43
John C. Wright		3,118	779 50	S. N. Bell		448	229 64
A. D. Brock	198	491	1,398 73	John R. Bradley		2,480	1,314 40
H. Groshon	54		310 50	L. L. Burke		2,430	1,272 96
J. E. Bright	256	584	1,699 02	W. A. Dodge		468	248 04
L. D. Hatch		2,640	1,399 20	G. W. Fowler		2,564	1,256 55
G. W. Bowen		2,519	1,335 07	A. T. Foxwell		2,332	1,235 96
Robt. H. White		2,411	1,255 34	Thos. K. Heath		2,393	1,268 29
John W. Work		2,460	1,303 80	Theo. Hodes		2,446	1,296 38
D. M. Covey		2,430	1,215 00	L. H. Jullien		453	240 09
John Goodrick		2,504	1,126 80	W. A. Lavalette		2,508	1,229 24
Wm. H. Hutchison		2,616	1,129 65	B. F. Mann		1,709	903 77
J. R. Mickle		2,483	1,146 11	A. P. Marston		2,438	1,292 14
B. F. Wright		2,504	1,126 80	C. X. Martin		2,260	1,197 80
J. K. Peabody		594	237 60	John S. Mills		1,020	540 60
W. C. Talley		2,512	1,004 80	J. P. Morse		2,391	1,267 23
John P. Tyrrell		2,485	994 00	A. R. Platt		247	130 91
Thos. J. Alleger		1,788	715 20	Geo. J. Schley		840	396 92
H. M. Armisted		2,404	961 60	A. W. Webb		737	390 61
G. B. Atkinson		2,346	980 20	J. S. Ziegler		1,146	607 38
W. R. Baum		2,225	890 00	Chas. W. Baker		2,472	1,238 00
P. M. Becker		2,536	1,014 40	George R. Brandon		2,310	1,158 00
A. Bennett		2,210	884 00	Edw. Y. Fisher		2,535	1,172 00
S. S. Bowman		2,459	983 60	Byron A. Ford		2,453	1,226 50
F. E. Burnside		401	160 40	E. L. Scott		2,359	1,179 50
W. E. Clegg		2,410	964 00	Rich'd B. Topham		1,232	616 00
E. Coburn		772	308 80	S. S. English		2,334	960 45
F. A. Cogswell		2,480	972 00	Daniel V. Fenton		2,348	1,059 00
Geo. M. Depue		2,451	980 40	Jos. C. Kauffman		249	109 56
W. C. Dewar		2,367	946 80	W. Marden King		2,468	1,110 00
W. B. Donaldson		2,520	1,008 00	Jos. W. Palmer		2,496	1,101 75
W. H. Ells		2,198	879 20	F. P. Snyder		2,448	1,101 60
B. D. Fleet		2,435	974 00	E. St. L. Babson		2,243	897 20
A. C. Francisco		1,917	766 80	M. W. Barr		1,554	621 60
Benj. Fugitt		2,473	989 20	W. Carlisle		2,419	967 60
J. L. Garrett		2,478	991 20	Chas. P. Cassidy		592	236 80
Jos. C. Gawler		570	228 00	William F. Ryan		2,517	1,006 80
W. H. Gilliland		104	41 60	Robert F. Sterling		1,080	432 00
J. F. Hadger		1,357	542 80	E. D. Stimson		2,397	958 80
J. E. Hogan		2,303	921 20	G. H. Tousey		2,432	972 80
G. W. Howland		2,546	1,018 40	J. V. R. Towers		2,466	986 40
C. A. Howle		2,342	936 80	W. E. Post		2,416	966 40
Louis C. Johnson		1,947	778 80	Franklin Amann		783	313 20
J. E. Keefe		2,497	998 80	James Austin		624	275 35
O. N. Lanning		2,494	998 40	Castleman P. Boss		134	53 60
F. A. Marsh		2,430	972 00	James G. Boss		115	46 00
J. C. Mellis		2,690	1,076 00	A. J. Boyer		1,241	496 40
John P. Murphy		232	92 80	E. L. Bryant		124	49 60
Frank Pritchard		2,257	902 80	Thomas H. Collins		356	142 40
Frank J. Reilly		1,924	769 60	N. S. Cologne		203	81 20
W. E. Sadtler		2,518	1,007 20	William M. Crawford		588	235 20
O. V. Shomo		948	379 20	J. W. Cross		343	137 20
W. H. Shomo		716	286 40	W. A. De Groot		2,539	1,015 60
A. O. Silvey		2,383	953 20	J. B. Dickman		581	232 40
Jeff Smith		2,230	892 00	C. M. W. Earle		538	215 20
J. N. Steed		461	184 40	Edward Eberbach		2,541	1,016 40
Frank I. Stewart		2,265	687 05	Joseph Ferguson		488	195 20
Chas W. Summers		2,295	918 00	R. P. Fithian		104	41 60
A. G. Tuohy		2,414	965 60	J. W. Fletcher		96	38 40
J. B. Trudgian		2,364	945 60	Ross H. Foster		480	192 00

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed.		Amount received.
	Days.	Hours.	
n H. Francis		483	$193 20
E. Frost		396	158 40
Gibbs		339	135 60
ourlay		2,460	984 00
Grady		101	40 40
. T. Greenfield		501	200 40
rigg		2,529	1,011 60
rumley		162	64 80
n H. Hale		593	237 20
all		215	86 00
. Hall		67	26 80
Hall		471	188 40
ay		2,423	969 20
oynes		166	66 40
G. Kirby		35	14 00
ce Lewis		176	70 40
Linton		35	14 00
aupin		1,687	674 80
cBride		131	52 40
fcKeever		83	33 20
Meany		1,313	525 20
iller		1,043	417 20
ishler		137	54 80
Mitchell		337	134 80
M. Montgomery		153	61 20
. Morrison		134	53 60
brough		25	10 00
omeroy		244	97 60
riddy		2,458	983 20
edfield		361	144 40
P. Reid		2,057	822 80
honfarber		110	44 00
hearer		2,315	926 00
s Payne Smith		243	97 20
Straughan		103	41 20
Stuart		2,516	1,024 75
Summers		173	69 20
ie Vansant		49	19 60
s N. Warren		84	33 60
. Webster		37	14 80
ilkins		2,444	977 60
illiams		1,085	434 00
ood		153	61 20
oung		152	60 80
ker		113	45 20
. Duvall		304	76 00
Duvall		436	109 00
einline		2,340	585 00
ackland		144	36 00
. Lewis		2,542	635 50
. Loftus		1,286	321 50
McCoy		2,549	637 25
etzung		96	38 40
Prosperi		311	77 75
Taylor		302	75 50
tte Torrey		2,290	572 50
nd F. Crist		1,426	213 90
D. Nealy		461	69 15
letcher		744	93 00
Danenhower	313		1,799 75
aker		2,156	1,142 68
oolidge		1,200	636 00
rizzell		1,497	793 41
illis		2,327	1,232 86
Livermore		2,599	1,377 47
. Mattingly		2,614	1,385 42
hoderick		2,570	1,362 10
assell		2,564	1,358 92
chmalhoff		2,066	1,094 98
Steele		1,581	837 93
. Swan		2,276	1,206 28
Walsmith		2,680	1,360 00
ampbell		2,652	1,152 10
utchett		2,506	1,127 70
. Thompson		2,369	1,066 05
H. Alburtis		7	2 80
. Barbour		5	2 00
John R. Berg		6½	$2 60
C. C. Brodie		41	16 40
Jas. H. Brooks		612	244 80
Jonas M. Brubaker		2,624	1,049 60
R. W. Burnside		583	233 20
E. Carnman		30	12 00
W. Y. Clarke		31	12 40
A. P. Coder		10	4 00
A. G. Cook		16	6 40
W. J. Cook		2,665	1,066 00
Alexander Dercourt		44	17 60
T. M. Donn		2,633	1,070 88
James Dougherty		1,344½	537 80
J. M. Eggleston		810	324 00
Henry Ellsworth		25	10 00
H. A. Graham		1,442	576 80
F. C. Griffith, jr		14½	5 80
W. S. Griffith		32½	13 00
W. E. Grimes		19	7 60
Annie L. Grove		12	4 80
C. R. Hanleiter		42½	17 00
Geo. H. Harris		213	85 20
J. R. Hathaway		83	33 20
L. A. Harvie		202	80 80
F. C. Helmick		910	364 00
F. L. Jones		439	175 60
Charles V. Juno		6	2 40
John W. Kennedy		7	2 80
William Kirkland		26	10 40
Arthur Knauer		9	3 60
L. O. Knowles		32	12 80
N. M. Light		16	6 40
Herman Martin		16	6 40
James W. Mathers		15	6 00
E. E. Mendenhall		12½	5 00
Lemuel E. Miller		4	1 60
Charles C. O'Neill		22	8 80
M. F. Peake		32	12 80
Chas. E. Pearson		12½	5 00
Wm. F. Perkins		2,628	1,051 20
Wm. M. Robinson		121	48 40
Jas. B. Rogers		415	166 00
James H. Ross		513	205 20
E. E. Scott		11	4 40
T. W. Shiel		451	180 40
E. D. Smoot		8	3 20
H. K. Southland		13½	5 40
W. W. Stanford		16	19 40
L. C. Stevens		103½	41 40
F. M. St. John		474	189 60
John R. Sullivan		7	2 80
T. M. Sullivan		2,592	1,036 80
Arthur J. Symonds		154	6 60
L. V. Taft		24	9 60
A. Thomson, jr		32	12 80
W. B. Thorpe		2,465	987 69
H. F. Tompkins		16	6 40
F. H. Trenholm		452	180 80
J. A. D. Turner		76½	30 60
J. C. Walker		7	2 80
E. K. Warren		8	3 20
M. E. Webster		29½	11 80
W. J. Weiss		386½	154 60
Chas. E. Young		309	123 60
Samuel Cole		2,699	674 75
Geo. A. Gordon		15	3 75
Saulsbury Ford		2,693	673 25
Moses Foskey		2,614	653 50
Wm. H. Maxwell		1,578	644 50
J. E. Hopper		2,515	471 55
P. Louis Rodier	313		1,799 75
N. Watkins	313		1,669 34
William H. Bushnell		2,418	1,281 54
Ed. Morgan		2,476	1,312 28
A. Gordon		2,491	1,245 50
W. Allison		2,480	992 00
Jno. G. Anderson		2,199	879 60

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed.		Amount received.
	Days.	Hours.	
Edward C. Belt		2,494	$744 70
Wm. M. Belt		2,517	1,006 80
Geo. R. Boone		2,378	951 20
D. B. Brown		213	85 20
Fred. Griffin		2,486	1,094 40
Wm. J. Harris		2,403	961 20
C. B. Hough		2,505	1,002 00
D. H. Hunter		2,312	924 80
Milo K. Huntsberry		2,410	964 00
H. Allen Ison		2,331	932 40
Wm. L. Jones		1,232	492 80
E. M. Kerrott		2,350	940 00
F. M. Lewis		2,444	977 60
J. H. Lowrey		2,506	1,002 40
W. W. McCollum		2,320	928 00
Frank McDermot		2,460	984 00
Glendour Medairy		2,499	999 60
Wm. E. Morcoe		2,522	1,008 80
W. F. Nabers		2,284	913 60
J. W. Rowan		2,356	942 40
Jed Shaw		2,520	1,008 00
H. O. Simons		2,471	988 40
F. M. Stuart		1,347	538 80
Henry Taylor		2,509	1,003 60
E. T. Toner		658	263 20
F. J. Ward		2,434	973 60
E. D. Klopfer		2,507	603 80
Arthur F. Maher		2,372	461 86
H. D. Beach		2,111	364 25
Robert L Potee		2,425	403 85
F. P. Lewis		2,501	371 87
E. R. Hendley		2,452	355 94
J. L. Penicks		1,941	246 52
B. G. Ferguson		776	97 00
Howell L. Brumm		2,244	420 74
Alex. T. Borland		2,432	972 80
W. S. Scott		2,381	1,190 50
M. Hunt		2,453	981 20
C. E. Meachan		2,349	939 60
John T. Nicholson		2,333	933 20
P. S. Sprightley		2,498	999 20
Sallie J. Cooke		664	124 50
M. A. Foley		2,551	478 31
C. C. Gibbons		2,447	458 81
Annie E. Gross		14	2 62
Charlotte Heatley		2,536	475 49
C. A. Hopkins		2,351	440 81
Mary F. Hughes		2,220	416 24
Ardella B. Huseman		2,439	457 31
Katie C. Kersey		1,591	298 31
Ella S. Kidwell		2,247	421 30
Lulie Laskey		2,491	467 05
Mary Martin		2,248	421 50
Emma Mollere		2,395	449 06
Maggie Nicademus		2,336	438 00
A. E. Pope		2,326	436 11
M. A. Proctor		2,030	380 62
Bettie Pumphrey		2,525	473 43
Kate L. Schlegel		2,518	472 12
M. E. Swain		2,520	472 50
Alice R. Vance		1,985	372 18
J. W. Busey		487	182 62
W. W. Harvey		2,483	931 09
Charles J. Bogan		517	204 25
J. W. Creed		2,414	603 50
Louis Crisemon		28	7 00
Henry Lehman		2,578	644 50
Vincent Lemmon		2,580	645 00
J. B. Montgomery		2,474	618 50
Edwd. G. Pleasants		2,559	639 75
John T. Purcell		2,512	628 00
Jesse Smith		2,505	626 25
Walter S. Smith		2,452	613 00
G. H. Thompson		2,273	568 25
Charles A. Williams		3,378	951 20
George Siggers		2,123	849 20
George Griffith		2,436	974 40
R. L. Gaines		669	$167 25
E. M. Ashton		2,454	564 42
A. Callahan		2,520	579 60
Isabel English		2,262	520 26
M. Falconer		2,500	575 00
M. V. Lackron		2,540	584 20
Florence Massey		2,280	524 40
Mary Nolan		334	76 82
M. V. Settle		2,540	584 20
E. Dunlop		90	15 00
Fillie Hohbein		2,280	380 00
Cora A. Pumphrey		2,286	381 01
Florence Smith		2,493	415 51
F. J. Waters		2,504	1,252 00
C. A. Moran		2,480	992 00
John R. Boss		2,472	988 80
H. N. Goff		2,192	876 80
J. G. Cloggon		2,476	432 68
Mary Cunningham		2,488	466 50
J. T. Heck	313		1,669 34
C. E. Hall		2,442	976 80
John T. Brewster		2,401	960 40
John W. Clark		2,448	979 20
Louis Bass		2,385	954 00
John W. Lancaster		2,497	998 80
R. H. Yates		1,565	626 00
O. H. Reed		2,391	956 40
Fred. W. Cole		2,373	593 25
Maurice D. Wagner		2,478	413 00
Frank F. Hoffman		1,969	492 00
James W. Keck		2,492	623 00
George W. Pocock		72	18 00
Alex. Elliott, jr	313		1,790 75
Geo. S. King		2,540	1,320 80
W. B. Baly		2,404	1,129 88
Edwin A. Banks		2,141	942 04
W. A. Brown		1,130	497 20
Perry Brown		1,412	621 28
Frank Coburn		1,928	848 32
H. C. Cowell		1,249	549 56
John E. Parker		1,901	836 44
W. B. Kelly		1,173	516 12
David Leonard		152	66 00
Paul Livingston		1,433	630 52
T. W. Shomo		2,195	965 80
Wm. M. Ruukel		302	132 88
George Recar		1,654	727 76
S. L. Rowzee		1,073	472 12
Geo. S. Perrie		2,374	949 60
J. S. Smith		2,746	1,098 40
W. S. Whitmore		2,679	1,071 60
Byron Waters		2,474	841 16
Wm. H. Baker		2,565	718 20
E. R. Baptist		2,536	710 08
Wm. J. Boyd		2,640	739 20
Thomas Byrd		2,589	724 92
Thad. Baden		2,714	814 20
H. W. Chase		3,085	863 80
W. T. Detweiler		2,354	659 12
L. E. Etchison		2,451	686 28
George Gayle		2,876	805 28
Edward S. Green		2,983	835 24
Charles A. Krause		2,452	686 56
W. M. Laporte		2,519	705 32
Martin Mangold		2,502	700 56
Edward T. Mathews		2,591	725 48
Charles Russell		2,525	707 00
J. C. Russell		1,589	476 70
E. G. Weaver		55	16 50
Horace Berry		2,502	500 40
J. P. Schaefer		2,603	420 42
A. B. Auer	313		1,790 75
A. J. Donaldson	313		1,669 34
A. E. Sardo	256	399	1,596 76
W. P. Martin		2,385	1,192 50
James Beattie		1,069	427 60
Joseph Bourquard		336	134 40

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
wn		2,191	$876 40	Annie Carpenter		1,588	$333 48
rnside		2,565	1,026 00	Rose Carrothers		2,468	462 75
. Cameron		2,362	944 80	Louise Carstens		2,603	488 0.
Cameron		2,245	898 00	M. I. Chaney		1,431	268 31
Clarkson		1,308	523 20	Victoria Clark		1,416	265 49
ole		1,873	749 20	Effie Clarke		2,287	428 79
Davis		1,077	430 80	Cecilia Clements		2,328	436 49
wson		271	108 40	Emma Collier		956	179 25
nham		1,400	560 00	Lizzie Condon		2,218	415 89
Donaldson		2,149	859 60	Bessie Conkling		447	83 82
h Donovan		2,289	914 80	Mary Corkery		1,673	313 69
Duff		1,945	778 00	Joanna Corridon		2,403	504 63
unne		2,414	965 60	Emma Cox		2,486	466 12
s		2,348	939 20	Martha E. Cox		869	162 93
Farrington		1,003	401 20	Delia Cremen		1,362	286 02
nam		1,730	692 00	Amelia E. Cromelien		1,874	351 37
raser		2,615	1,046 00	Mary A. Crooker		1,363	255 56
Friery		2,603	1,041 20	M. F. Cushley		2,277	426 92
rbershaw		1,346	538 40	Elizabeth Davis		2,091	392 05
raham		1,628	651 20	Ella M. Delaplane		653	122 44
ıs Hall		2,564	1,025 60	M. Dellamico		2,521	472 69
rrigan		2,463	985 20	E. J. De Lorme		2,289	428 79
rning		2,597	1,038 80	Elizabeth Dement		2,525	473 43
Hudson		2,438	975 20	Nellie Donoghue		1,991	376 72
urley		1,277	510 80	Maggie Duffy		2,190	410 62
Hutcherson		2,526	1,010 40	Libbie A. Flahavhan		2,631	552 51
nes		2,603	1,041 20	Alice A. Fon Narbutt		2,183	409 30
s		2,595	1,038 00	Annie Fuller		1,518	284 61
dick		2,547	1,018 80	Mollie Garthwait		2,297	430 66
Maher		2,517	1,006 80	Lizzie M. Garvey		962	180 37
F. Maher		2,547	1,018 80	Annie Gaughran		1,130	229 07
ı.		225	90 00	Isabella Girvin		903	169 31
. McCoach		2,483	993 20	L. V. Godey		1,384	273 34
McKee		606	242 40	A. Gormley		2,330	436 80
Mellon		1,486	594 40	A. D. Goss		2,283	428 05
Melliette		940	376 00	Ada M. Greenwood		1,580	296 24
. Moran		996	398 40	Laura L. Grimes		2,553	478 69
el		2,414	965 60	Lilian M. Hall		130	24 37
H Owings		1,609	643 60	Florence Harman		2,064	398 58
rter		2,376	950 40	Rose A. Hart		2,545	477 19
all		1,015	406 00	Mary Hayes		2,408	451 50
eves		2,344	937 60	Johanna Hickey		1,864	391 44
Riley		1,967	786 80	Mary Hill		2,555	536 55
Robb		2,230	902 00	Nellie Hopper		2,458	460 86
binson		2,448	979 20	Mollie A. Hunter		2,532	531 72
do, jr.		2,597	772 85	Mary A. Hurdle		2,480	464 98
P. Thomas		2,527	1,010 80	Blanche Hurley		728	136 50
nne		2,567	1,026 80	Lola C. Hutton		227	42 56
Wright		2,585	1,034 00	A. Ingersoll		2,097	393 16
ampion		2,551	614 35	Jennie Jackson		2,103	394 30
ghes		2,484	610 65	Mary Jackson		1,756	329 25
onkling		1,221	203 50	Annie R. Jewett		2,534	475 13
ohnson		1,038	129 75	Mary Johnson		2,500	468 75
Adams		2,528	473 99	Virgie Johnson		2,314	433 85
L. Addington		825	154 68	Ada H. Johnston		1,098	205 86
Allison		2,550	478 12	M. T. Jones		2,391	502 11
trim		2,134	400 13	M. V. Keenan		2,004	375 75
pler		576	120 96	Mary A. Kelly		2,201	412 67
ulick		2,414	452 63	S. A. Kennedy		2,160	404 99
rnes		2,172	407 50	Ann D. Langley		2,396	449 25
aylie		189	35 44	Fannie Lee		2,379	446 06
Baylie		1,245	233 43	Elizabeth Litsinger		1,163	218 06
Beamer		2,326	488 46	Bettie Long		2,422	454 12
elcher		2,310	433 13	Annie E. Long		1,355	284 55
Bemis		2,423	454 30	M. E. Ludgate		2,275	426 55
st		1,956	410 76	Jennie Marcey		2,444	458 25
		2,429	455 42	Mamie Marr		96	20 16
Blush		2,453	515 13	Ollie Marr		63	132 51
olinstarck		2,504	469 50	Ellen McCarty		2,364	496 44
irche		2,454	460 12	M. A. McCormick		2,145	402 19
urdette		1,849	346 68	Lizzie McCullip		2,522	472 87
. Burges		1,367	256 30	Ella McGraw		1,718	323 80
irges		171	35 91	Maggie McKie		2,584	484 50
irges		514	96 37	Bridget McNamara		1,311	245 81
ie Burke		2,289	480 69	Jennie McNamara		2,334	490 14
allaghan		2,555	479 05	Mary A. McNamara		2,528	473 99
ie Carlisle		1,536	287 99	Mary Mills		2,112	395 99

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed. Days.	Time employed. Hours.	Amount received.
M. J. Minor		2,016	$378 00
Annie Mitchell		1,421	266 43
Cecelia A. Moore		2,294	440 12
Julia Murrell		2,488	466 50
M. J. Nicholson		2,134	400 13
Mary Nally		2,513	471 18
C. R. Ober		2,181	408 93
Mary O'Brien		2,577	483 17
Mary O'Brien		1,344	252 00
Lizzie O'Neal		715	140 00
Ella Place		2,131	390 52
A. W. Potter		2,410	451 87
E. M. Proctor		555	104 06
Mary E. Ragan		1,476	276 74
Julia Ready		1,123	235 83
Mary A. Rearden		1,070	200 63
Emma Reese		2,443	458 05
Catherine Schermerhorn		2,181	408 94
Susie V. Sinon		1,446	303 66
Anna M. Slentz		2,450	459 37
Ella Steel		2,481	465 19
Maggie Sullivan		2,420	508 20
Emma Swain		2,326	436 10
Margaret Sweeney		2,393	448 68
Lydia R. Tennant		1,002	187 86
Henrietta Tompkins		1,722	361 62
Alice E. Toner		1,322	268 61
H. A Travers		2,485	465 93
Martha Trunnell		2,377	474 82
H. A. Turner		2,425	454 67
M. E. Tyler		2,067	434 07
Ida Van Arsdale		2,093	392 42
M. E. Warner		2,122	397 87
Mary E. Weser		2,375	445 31
M. V. Wheeler		1,911	358 32
Adah Winckelman		2,149	451 29
Mary Wise		797	149 44
Mary H. Wise		2,417	453 18
Gertrude E. Wooley		1,060	209 99
M. A. W. Lewis		2,443	1,221 50
A. M. Parsons		2,520	1,008 00
W. H. Stebbins		2,504	939 00
W. H. Carr		2,682	1,005 74
Julius N. Keck		2,736	1,025 98
E. C. Soules		2,537	845 66
E. A. Sikken		2,490	778 13
H. T. Williams		2,821	881 54
R. A. Gray		2,580	722 40
James W. Bede		2,521	630 25
James Bell		754	188 50
W. T. Benjamin		1,851	462 75
John Better		1,200	300 00
H. C. Bolden		2,383	595 75
J. M. Edmunds Brown		2,508	627 00
John A. Bryan		2,698	674 50
Edward Campbell		2,450	612 50
Benjamin Coakley		2,526	631 50
G. Coakley		2,660	665 00
George W. Cole		1,284	352 75
G. William Cole		1,351	337 75
William R. Curtin		580	145 00
Thomas Daniels		1,143	285 75
Charles F. Davis		1,322	330 50
Frank Dial		2,286	571 50
John Dice		1,353	338 25
N. T. Ellsworth		2,268	603 00
L. A. Etchison		480	145 00
George H. Foakey		2,931	732 75
C. L. Freeman		112	28 00
R. L. Gaines		1,461	365 25
William M. Gerard		440	66 00
Alexander Gould		731	182 75
Adolphe Gillot		1,756	439 00
C. C. Haddock		2,055	513 75
Wm. T. Hall		2,059	514 75
Francis Hamilton		2,091	522 75
Wm. Hendrick		584	$146 00
Louis E. Henry		416	104 00
Frank F. Hoffman		58	14 50
Robert J. Houck		2,066	516 50
William Hutchinson		2,570	642 50
L. A. Iardella		2,504	626 00
Obadiah Jones		1,301	325 25
Richard E. Jordan		2,177	544 25
Sylvester Jordon		1,239	309 75
Alanson Kelsey		600	150 00
William Lang		2,528	632 00
Robt. C. Langley	1	2,343	588 00
J. W. Lomax		112	28 00
Washington Leftrich		2,678	669 50
Levi McCabe		2,111	527 75
Edward S. McDonald		2,419	559 85
J. K. McDonald		2,263	565 75
Robert C. McGill		431	80 81
J. F. Mitchell		2,078	519 50
D. H. Moffett		229	57 25
G. W. Mulloy	1	1,533	385 50
P. R. Noone	93	864	425 25
James Prather		1,224	306 00
F. C. Ratcliff		2,133	533 25
Daniel C. Ray		2,069	517 25
Douglas Reid		2,564	641 00
John Roberts		2,428	607 00
C. H. Robinson		1,392	348 00
Lewis Russell		2,588	647 00
John Ryan		399	99 75
Wm. E. Saunders		1,087	271 75
Wm. S. Seymour	2	1,010	257 00
Thomas Shelton		2,520	630 00
Geo. Shurland		698	174 50
J. E. Smith		1,090	272 50
Moses Smith		2,048	512 00
Z. P. Spates		81	20 25
J. B. Stoops		2,091	523 00
Lewis Thomas		2,746	686 50
W. A. Tilley		21	5 25
David J. A. Toznalin		409	102 25
Frank J. Wilson		2,491	622 75
C. C. Woodard		479	147 44
C. G. Worthington		1,151	287 75
James E. Young		2,763	690 75
W. D. Hohbein		2,469	370 35
J. Geo. Day	243		1,397 25
F. Munson	312		1,709 75
Wm. L. Lamb		2,752	1,238 40
W. J. Simmons	56½	2,089	1,067 17
E. A. Holl		2,602	1,170 90
J. J. Jones		2,416	815 60
W. W. Clark		2,117	661 56
Thomas Pitchlynn		2,367	671 72
Randall Bowie		2,401	600 25
B. F. Cox		92	23 00
W. Dawson		2,538	634 50
John N. Davis		2,137	534 25
W. D. Evans		2,438	609 50
J. M. Gorman		16	4 00
Thomas B. Hyatt	5½	2,500	637 37
Lloyd T. Jones		2,212	553 00
John W. Jones		2,817	704 25
Stewart M. Lewis		2,367	591 75
John Miner		2,610	652 50
C. M. Morrison		2,327	581 75
M. T. O'Brien		2,322	580 50
M. Simpson Reiley		149	37 25
William H. Murphy	260		780 00
John Talbert	367½		916 44
Xenophon Peck	26[illegible]½		670 94
John W. Pomeroy	367½		918 44
John A. Bayly	2		5 00
John R. Cason	29½		67 21
J. H. Caldwell	280½		630 84
J. R. Francis	322½		725 34
A. R. Hilton	297½		669 00

No. 20.—*Persons employed in the public printing, &c*—Continued.

Name.	Time employed. Days.	Time employed. Hours.	Amount received.
. Hyman	239½		$539 71
eissring	285½		652 27
Cullough	53		119 25
lilstead	3		9 00
is Mullen	336½		756 84
. Miller	295½		664 59
Nally	57½		129 66
A. Patterson	356½		802 68
l Robinson	14		31 50
Kitchie	59		132 75
tyan	317½		714 09
tus Schwartz	9		20 25
Smith, jr	295½		664 59
m H. Scribner	312		702 00
Sprague	367½		829 96
Tucker	9		20 25
Todd	5		11 25
I. Thompson	269½		607 21
w Taylor	92		207 00
Williams	9		20 25
Vurdemann	364½		820 96
Lincoln		2,888	1,617 28
W. Hughes		3,121	1,654 13
m Robinson		3,120	1,653 60
Vustenfeld		2,859	1,515 27
Wade		1,962	981 00
. Carrier		2,628	1,051 20
as D. Bennett		3,072	1,228 80
hew		2,830	1,132 00
Scott		2,367	946 80
Myers		2,225	890 00
Nixon		2,320	928 00
Hughes		2,741	1,096 40
Simonds		2,501	1,000 40
t E. Gayle		2,739	1,095 60
Bundy		2,488	995 20
King		2,482	992 80
Kibbey		2,392	956 80
m Ratcliff		639	255 60
T. Jewett		2,378	951 20
m Reynolds		1,792	716 80
Lendrum		30	12 00
y P. Cotton		861	344 40
Randolph		186	62 01
Whitaker	36	2,743	965 19
Fletcher	29	2,747	945 44
kins		2,133	666 56
m A. Lisher		2,009	627 81
t K. Hampson		3,147	983 42
Leonard		32	10 00
nder Douglas		2,891	809 48
Hall	374½		1,023 12
Lee	183	856	671 50
m Bush	325		812 50
el Dougherty	374		841 50
m Bell		2,512	628 00
Cannon		2,041	510 25
s Fletcher		2,850	712 50
S Green		1,581	395 25
A. Gleeson		2,072	518 00
e C. Glick		778	194 50
Jones		416	104 00
Laws		1,358	339 50
t Logan		2,072	518 00
k McNamee		2,045	511 25
as Peter		672	168 00
Robinson		2,589	647 25
n Robinson		2,673	668 25
Waters		2,068	517 00
t Williams		2,475	618 75
er A. Searle		344	57 34
PIECEWORK.			
e C. Glick			436 06
he Guillot			
Mitchell			104 84
John Randolph			$331 23
M. Simpson Reiley			114 34
TIMEWORK.			
Thomas B. Penicks	313		1,799 75
George Fordham	313		1,669 34
Joseph Isaacs	84	509	575 25
William B. Evans	313		1,252 00
Richard Berry	13	1,355	746 83
J. Paul Chambers		1,583	823 16
W. H. Moran		1,417	584 80
M. A. Du Bois		2,413	965 20
R. B. Harford		2,650	1,060 00
William C. Heck		1,600	640 00
John W. Maxwell		2,231	892 40
Daniel C. McGivern		2,683	1,073 20
Will P. Reese		2,548	1,019 20
Jake Reiher		1,633	653 20
D. W. March		2,443	916 11
William H. Mickle, jr		2,686	1,007 24
G. W. Bates		2,540	863 60
George W. Folck		2,441	829 94
John A. Tafe	365		1,060 00
A. J. Houghton		1,227	383 44
James A. Hewes		1,934	522 73
H. C. Moran		2,266	708 13
Charles J. Ortlip		2,596	811 23
Edward H. Parlin		2,317	706 26
R. Carter		272	85 00
Hod Reynolds		2,030	634 37
G. L. Pearson		1,518	474 37
W. E. W. Rowe		1,683	484 04
M. D. Anderson		1,909	506 80
Charles F. Burch		1,692	507 60
S. K. Coster		2,485	745 50
J. W. Dutton		1,882	564 60
Luther R. Frank		2,061	618 30
Harry A. Gwin		2,266	679 80
James F. Lacey		1,450	435 00
D. McCathran		2,540	762 00
D. A. Neal		1,980	594 00
C. A. Rice		1,346	403 80
Rush C. Steele		2,109	564 35
R. L. Todd		1,779	466 00
J. L. Venable		2,323	696 90
Henry C. Watson		2,445	733 50
John Weckerly		2,157	647 10
Alpha B. Beall	3	2,719	686 50
James R. Bell		1,236	309 00
William H. Berry		2,566	641 50
W. H. Britton		1,462	365 50
C. N. Buckland		2,494	623 50
W. H. Burger		401	100 25
Thomas J. Burke		371	92 75
I. N. Butler		1,919	479 75
M. Clark		2,311	577 75
W. S. Clarke		1,792	448 00
W. B. Collier		1,816	454 00
B. F. Cox		24	6 00
P. J. Crenshaw		849	212 25
Thomas Croggon		30	7 50
Frank F. De Lea		2,281	570 25
John N. Dorster	186	1,107	741 75
James Doyle		2,540	635 00
Patrick Doyle		2,674	668 50
Robert Pearson		1,894	473 50
William D. Foos		2,469	617 25
J. W. Freeman		2,501	625 25
John F. Hogan		2,198	549 50
J. Holderby		112	28 00
U. S. G. Jarvis		305	76 25
M. Jenkins		484	121 00
J. C. Johnson		83	20 75
John Johnson		1,621	405 25
Owen Keefe		2,398	599 50
T. J. Kenney		429	107 25

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed. Days.	Time employed. Hours.	Amount received.
N. M. D. Lathrop		2,477	$619 25
John Lee		2,069	515 00
F. B. Lloyd		208	52 00
D. P. Lynch		2,365	591 25
Argyle Mackey		2,035	508 75
Peter McCallum		20	5 00
James McKenna	1	2,643	663 00
Patrick McNamee		478	119 50
C. S. Mills		1,667	416 75
Thomas P. Mitchell		2,396	599 00
John Murphy		2,253	563 25
Noel Nichols		1,184	296 00
F. C. Oberholtz		1,144	286 00
B. F. Oder		2,426	606 50
John X. Phillips		788	197 00
Simon Pocher		2,188	547 00
George M. Raub		2,658	664 50
A. J. Rock		2,549	637 25
R. E. Scott		1,278	319 50
William Shephard		2,080	520 00
James Smith		20	5 00
Noble Spates		91	22 75
G. A. Traylor		1,254	313 50
J. W. Towers		30	7 50
John H. Van Lew		1,829	457 25
John N. Van Lew		500	125 00
Howard C. Wall		2,059	514 75
H. S. Washburn		2,513	635 75
Daniel Wathen		2,712	678 00
Clayton Webster		1,840	460 00
E. W. Williams		2,019	504 75
Charles H. Worden		468	117 00
Charles F. Ford		152	28 50
W. I. Hutchins		2,504	417 34
PIECEWORK.			
James H. Alburtis			1 096 65
John Alburtis			199 10
Oscar Alexander			639 30
O. S. Allen			699 20
Franklin Amann			31 40
P. B. Anderson			408 80
John Armstrong			301 25
E. N. Ash			10 75
W. R. Atwell			306 35
C. W. Aughinbaugh			34 75
John C. Ballou			496 50
George Baggott			192 35
William R. Barbour			639 50
F. M. Barnes			272 20
M. F. Barrett			839 60
W. H. Bawden			141 10
B. H. Bealer			85
R. E. Beall, jr			168 83
Seward Beall			372 35
John A. Behrle			151 81
John R. Berg			701 20
George Berry			618 24
W. O. Birmingham			116 40
W. A. Bohn			794 50
J. A. Borden			318 40
William H. Bosley			193 65
Andrew Bothwell			58 05
R. T. Bray			3 05
U. P. Breazeale			61 55
John J. Bresnahan			868 80
James E. Brister			52 55
C. C. Brodie			473 50
James H. Brooks			777 30
Wilbur G. Brower			316 30
E. C. Brown			378 10
W. R. Burgess			736 90
H. W. Burpham			537 40
R. W. Burnside			520 25
N. Buxmeyer			37 25
W. J. Caldwell			308 15

Name.	Time employed. Days.	Time employed. Hours.	Amount received.
W. R. Carrigan			$71 75
W. R. Chipley			39 95
J. Jerome Clark			64 15
B. F. Clarke			174 40
W. Y. Clarke			997 05
A. P. Coder			877 10
T. M. Cogswell			97 95
C. F. Cole			70
Thomas H. Collins			39 85
John H. Cook			157 27
A. E. Corning			553 55
E. Cornman, jr			986 60
Charles W. Conway			59 90
Louis W. Cornwell			774 45
J. D. Cosby			418 75
Al. Cottle			331 35
W. H. Craig			409 00
W. M. Crawford			650 80
W. N. Croggon			43 15
J. A. Crow			133 75
George A. Crump			36 20
George D. Cunningham			1 00
A. D. Darby			320 80
H. W. Davis			95
E. W. Davison			142 30
E. De Caindry			915 00
Frederick Decker			1 65
D. C. De Knight			367 10
G. Denham			1 80
William H. Dennesson			114 40
Alexander Dercourt			516 85
O. Devautier			28 70
C. J. Devaughn			769 95
John B. Dickman			244 45
James Dougherty			2 70
George P. Dowell			401 22
C. M. W. Earle			48 75
Samuel W. Edmunds			738 55
M. D. Egan			53 15
W. D. Egbert			300 35
J. M. Eggleston			197 40
Chris. F. Eise			57 55
Jacob Eitel			5 55
J. E. Ellegood			590 90
Thomas Ellis			3 25
Henry Ellsworth			321 15
Warren B. Esty			522 25
Patrick Feehan			71 65
Joseph Ferguson			626 80
Edward Flagg, jr			91 65
D. W. Fleming			440 10
Ross H. Foster			56 10
William H. Francis			123 95
Henry L. Frazier			700 38
Henry E. French			469 55
William J. Galbraith			596 65
J. P. Garner			725 15
Lewis A. Garrett			114 55
Joseph C. Gawler			43 30
Olive I. Gilmore			566 40
K. S. Goodloe			460 15
E. B. Gordon			73 10
George A. Gordon			750 00
James O. Gorman			1,021 00
G. Wilmer Graham			46 35
H. A. Graham			249 35
George H. Green			63 75
Wm. E. T. Greenfield			102 25
F. C. Griffith, jr			857 20
W. S. Griffith			1,049 25
W. E. Grimes			833 90
W. A. Griswold			525 15
Moses Grooms			85 30
Annie L. Grove			667 50
May M Grove			515 35
George Gulick			582 35
W. E. N. Hagan			00

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
e B. Hall			$39 20	E. E. Mendenhall			$1,107 00
Hall			518 00	W. A. Mellis			423 65
Iammar			73 25	J. W. Metzung			272 45
Iandiboe			867 75	C. K. Michael			203 55
Ianleiter			110 05	D. G. Miller			523 40
l C. Hanlon			937 95	J. W. Miller			403 55
Iannum			37 70	Lemuel E. Miller			835 85
Iarbaugh			640 95	Alex. J. Milliette			36 25
Haner			758 05	A. L. Mishler			793 40
L. Harper			508 35	W. A. Mitchell			871 20
n N. Harper			1,020 75	Orlando S. Montz			107 95
e H. Harries			898 93	J. J. Moody			216 85
Harrison			370 95	David Moore			78 86
Iarvie			809 15	John F. Moore			237 45
Iathaway			911 70	T. P. Moore			510 35
d W. Hearne			69 80	F. W. Muhlhofer			570 17
Ielmick			638 80	Albert K. Mundheim			123 15
Ienning			7 50	C. P. Murphy			237 07
s Henry			11 65	Edward P. Murray			381 65
C. Higgins			811 65	Charles M. Myers			794 90
e W. Hodges			508 10	Philip Nachman			562 91
Horton			30 10	Edward G. Nalle			683 45
Iouck			34 35	John Nelson			188 05
Iudson			439 95	E. Newbrough			67 65
s Hughes			638 60	E. S. Nichols			264 50
Iunt			870 05	W. E. Nivens			9 85
Iurley			3 80	Horace Noah			523 40
Jarvis			34 80	R. W. Norwood			375 30
Johns, jr			671 20	Edwin Nott			106 85
T. Johnson			270 47	J. F. O'Connor			555 73
e Johnson, jr			409 35	William A. Ogle			168 25
Iones			579 95	Charles I. O'Neill			1,102 35
Judge			97 20	John O'Neill			512 30
e S. Kauffman			88 30	Charles R. Parsons			56 00
Keefer			113 20	E. W. Patton			49 75
Kelly			326 55	Geo. W. Paxton			18 70
W. Kennedy			140 00	Chas. P. Peake			38 45
L. Kennedy			1,167 75	M. F. Peake			647 80
m Kirkland			881 10	Chas. E. Pearson			970 85
R. Knapp			593 45	J. Polk			393 04
r Knauer			873 75	H. M. Pomeroy			615 30
Knowles			669 70	P. E. Porter			59 05
Kriegner			39 70	Frank L. Post			13 05
l Krumbine			144 70	L. H. Post			424 55
amson			61 80	A. H. Potts			742 20
Lancaster			355 80	H. D. Pryor			755 20
Lantz			6 55	A. Purcell			777 85
Lavalette, jr			830 35	James E. Reese			143 55
Lay ton			21 10	Edw. Redfield			369 43
R. Le Chevalier			341 60	G. A. Rinehart			106 15
Leonard			856 35	Frank M. Roberts			133 65
Leonard			14 35	C. H. Robison			30 20
Lewis			606 25	Wm. M. Robinson			789 65
Lewis			545 75	G. Rockwood			84 10
Light			1,033 45	Jas. B. Rogers			945 85
Lilley			25 05	A. A. Roland			138 85
s Lindenberg			11 80	James H. Ross			852 35
Lyles			37 00	D. P. Rowell			702 20
s McAuliffe			676 95	Emmett B. Russell			387 10
l McCallum			28 10	T. G. Ruth			533 05
McCarthy			71 90	W. S. Sampson			147 45
McCarty			119 00	M. D. Sanderson			229 80
McCracken			116 55	D. M. Sandidge			209 80
McDonald			35 10	D. L. Sandoe			678 60
McFarland			181 61	Chas. H. Sawyer			296 65
McGowan			714 70	J. H. Schoepf			116 90
McGuiggan			535 20	E. E. Scott			119 25
McKeon			93 95	Martin Schram			572 85
MacLeod			129 65	J. Franklin Sewell			196 71
Malone			663 35	David Shaw			843 75
Maloney			44 75	John H. Shaw			704 00
Marchand			10 30	John P. Sheehan			90 65
Marschalk			367 10	James H. Sherwood			162 55
an Martin			812 20	T. W. Shiel			605 20
s W. Mathers			737 50	E. E. Shott			135 60
Maxwell			12 15	Wm. Skeen			41 46
J. Mealy			10 70	Charles Payne Smith			232 95

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
E. W. Smith			$141 35	John Delahunty			$344 05
W. H. Smith			96 80	L. C. Dillon			714 20
E. D. Smoot			775 15	S. S. English			4 50
Chas. H. Snyder			832 00	J. Howard Fishback			99 40
H. K. Southland			1,182 40	R. P. Fithian			310 75
T. C. Spurgeon			581 50	L. F. Fletcher			339 37
B. D. Stallings			185 20	George I. Ford			946 35
W. W. Stanford			145 35	J. G. Forney			1,084 30
L. C. Stephens			830 00	A. T. Foxwell			95 40
H. W. Stevens			487 20	James E. Frost			835 00
C. S Stevenson			243 90	J. A. Gibbs			589 65
F. M. Stuart			147 15	Daniel Grady			960 10
F. M. St. John			531 60	E. C. Grumley			880 30
Monticello Stoddard			237 54	Arthur J. Hall			876 10
Frank W. Stratton			7 90	Fred A. Hall			1,151 15
C. W. Straughan			93 30	J. P. Hamilton			835 25
John R. Sturgis			14 35	J. Fisher Haner			1,307 75
John R. Sullivan			141 55	C. Ed. Hodgkin			1,036 25
Timothy Sullivan			150 25	Henry Houghtaling			1,250 40
H. S. Sutton			345 40	John Hoynes			867 65
T. J. Swander			15 80	H. H. Humble			782 60
Arthur J. Symonds			905 10	G. J. S. Hunnicutt			738 55
L. V. Taft			665 75	George S. Johnson			283 25
J. T. Taylor			546 35	Louis C. Johnson			121 35
Richard Taylor			43 25	Simeon Johnston			828 85
Charles O. Thompson			85 50	L. H. Jullien			669 70
A. Thompson, jr			427 55	Charles V. Juno			1,085 30
John Tillinghast			96 35	Jos. C. Kauffman			994 30
E. S. Tompkins			30 40	Samuel G. Kirby			1,452 25
H. F. Tompkins			723 60	Aug. M. Lang			1,246 25
H. M. Towner			129 40	William D. Leahy			193 40
Andrew Turnbull			63 00	Clarence Lewis			1,218 60
Alfred Turner			632 15	W. A. Linton			466 65
J. A. D. Turner			756 50	J. R. McBride			1,203 65
Lewis M. Turner			100 30	J. A. McCabe			1,146 15
George B. Van Keuren			443 68	H. H. McKeever			1,236 65
J. Leslie Vansant			687 25	F. T. Maloney			1,002 85
G. F. Vought			1,027 00	C. W. Mander			987 15
Henry Walker			126 30	J. F. Maupin			248 40
J. C. Walker			153 40	F. B. Mercer			68 70
John Walkup			128 25	John S. Mills			216 00
Gustave Warnke			86 61	M. M. Mitchell			143 70
Charles F. Warren			737 75	Jas. M. Montgomery			1,165 65
Edward Warren			136 70	Chas. A. Morgan			896 05
E. K. Warren			504 40	John R. Morrison			857 95
John F. Weber			561 65	William H. Nelson			151 70
M. E. Webster			733 60	E. Newbrough			264 90
W. J. Weiss			651 50	Jeremiah O'Connell			1,123 15
James L. Welty			1,033 25	A. R Platt			819 70
John H. Wheeler			101 65	Theo. P. Reid			153 30
W. J. White			127 75	J. M. Richards			297 25
A. Williams			130 70	W. F. Rodrick			1,632 10
Thomas A. Williams			1 70	Geo. J. Schley			789 65
Charles T. Wood			53 50	J. G. Schonfarber			231 00
George T. Woodgate			298 95	M. J. Sherk			1,236 30
D. P. Wyman			28 10	H. L. Shomo			1,140 25
Charles E. Young			815 20	J. L. Sinn			1,298 45
W. L. Young			20	P. R Summers			811 95
James Austin			818 85	Samuel Taylor			712 02
J. W. Barnes			940 00	Samuel W. Taylor			7 28
F. H. Barnhart			1,112 80	J. L. Thompson			893 45
S. H. Bell			1,124 10	Richard B. Topham			436 15
J. C. Bonsall			82 40	A. W. Van Dyke			225 75
Castleman P. Boss			947 30	Charles N. Warren			927 75
James G. Boss			868 80	A. W. Webb			570 40
William H. Bosley			77 10	George A. Webster			1,033 80
William M. Boyd			1,011 85	O. S. Webster			1,080 90
A. J. Boyer			426 35	T. G. Williams			283 10
F. A. Brashears			1,010 20	R. C. Wilson			1,216 80
F. E. Buckland			1,298 50	T. B. Wood			1,009 00
J. F. Campbell			272 70	John P. Woods			279 10
R. H. Campbell			1,038 05	S. K. Young			1,154 00
J. W. Carter			1,412 25	J. S. Ziegler			596 00
N. S. Cologne			119 65	L. K. Zook			896 00
William M. Connell			91 40	H. Zucker			268 80
A. G. Cook			301 15	A. W. Adam			313 95
J. W. Cross			143 50	Florence J. Adam			182 91

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
ams			$314 52	Ann Cowan			$304 86
lamson			230 47	Janie Cox			369 80
rn			358 48	Georgie E. Crawford			320 58
rose			394 62	Nellie Cronin			401 26
drews			416 06	M. A. Crooker			133 53
ony			273 50	Annie E. Cross			168 63
ison			460 11	Ida M. Cross			276 23
acon			406 75	L. M. Cross			192 42
an			251 54	Lucy R. Crupper			3 94
lmain			64 07	Maggie Culbertson			23 45
aker			291 00	K. Cunningham			411 49
r			417 03	C. Daily			363 59
aker			614 50	H. Daily			311 40
Ball			282 03	A. Daly			341 99
aks			198 58	A. V. Daly			491 68
aptista			343 90	M. Darby			420 90
att			410 92	L. J. Dart			622 48
rrington			206 32	E. Davis			434 83
			272 40	L. H. Davis			568 50
uman			45 37	Maggie B. Davis			417 25
ayliss			57 77	M. Dawson			310 22
atty			624 67	E. A. Dickinson			424 76
gs			426 26	S. Dickson			419 21
shop			9 73	N. Diggs			442 18
Black			344 12	Ida Dinger			331 73
wie			366 91	Maggie L. Dodd			343 02
s			424 14	Ida Dodge			4 94
s			231 33	I. E. Doherty			302 24
wner			307 69	Lillie J. Donn			309 09
ford			228 82	E. Donnelly			402 77
n			610 46	M. Donnelly			384 32
ick			315 08	Katie Donohue			423 99
Brintnall			154 95	J. A. Dougherty			27 06
ooke			326 84	J. L. Dowling			346 30
own			319 01	Lizzie Downie			254 97
own			72 39	J. A. Downing			362 69
ryan			428 94	B. Duffy			328 37
ryant			118 13	Kate Dunne			300 93
Buete			195 55	A. Dutrow			360 76
rgess			438 71	O. Dwyer			253 68
urgess			328 79	S. Edelen			524 84
E. Burke			260 03	L. T. Edmondston			573 37
rr			305 36	Sarah Edmunds			287 80
. Burrows			380 95	J. Elliot			452 75
rwell			290 15	I. R. Ellis			470 24
rton			162 85	Mary E. Ellsworth			303 23
r			398 83	Minnie Elwood			85 88
Butler			4 46	E. J. Essex			605 03
Cahill			368 22	Laura V. Etter			314 12
allahan			344 87	Mary Evans			452 01
. Carrico			395 29	V. M. Evans			359 75
rter			368 83	Annie P. Farley			292 39
arter			158 40	Ellen Farrell			370 49
h Casper			473 14	Sallie Faulkner			293 71
			355 39	N. Felger			343 96
hinn			89 55	Nellie E. Fish			469 23
ritzman			549 25	A. Fisher			47 95
itt			228 15	Minnie Fitzgerald			273 76
lancy			523 95	Katie Flemming			312 18
ark			888 73	M. Flemming			112 50
ison			285 88	H. C. Flynn			180 67
Clements			265 13	J. B. Forbes			359 73
ie Clone			67 55	Mary C. Ford			8 68
oberth			153 45	S. Fordham			343 74
is			448 53	C. Fowler			253 66
Collins			523 29	N. B. Franklin			409 88
J. Collins			31 35	M. Garttrell			293 45
s			450 50	Belle Gates			425 00
nbus			320 18	Bell Gheen			326 89
nnell			218 87	M. Gibbs			363 56
nnelly			62 48	Louise Gibson			294 42
ielly			260 88	J. F. Gilson			40 86
or			334 78	Queenie Gilson			32 05
onnover			259 73	Ellie C. Glasgow			304 09
Cook			416 62	E. Glendenning			7 61
in			308 70	E. W. Godwin			611 99
tney			348 93	Elizabeth Gorman			361 48

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed. Days.	Time employed. Hours.	Amount received.
E. Gould			$292 42
I. C. Greene			384 97
A. I. Griffith			394 63
Carrie Guggenheimer			429 35
Mary A. Hackett			467 90
M. Hall			429 56
Mary M. Hammond			69 52
E. Handebeau			479 06
M. Handy			465 94
Ella C. Hardy			452 42
Betty M. Hargrove			279 61
Gertrude Harleston			239 57
Nettie Harlow			354 78
Delia Harper			467 81
E. J. Harper			488 10
L. V. Harper			300 30
M. A. Harper			286 15
Clara A. Harner			438 44
F. V. Harris			195 72
T. Harrison			465 50
F. A. Haskell			263 93
E. Havenner			315 36
A. A. Hayes			588 29
M. E. Hayes			373 52
L. Hays			420 62
Ella C. Hayward			81 20
Mary E. Head			321 58
E. Heffell			496 09
Georgie Heinline			374 80
J. Hellings			352 36
V. Hendrick			476 35
Katie Hensan			316 18
S. Hess			598 00
Edith A. Hicks			232 39
A. Higgins			472 52
L. Hill			316 13
J. Hitchcox			442 81
A. Hodge			261 25
M. V. Hoffman			467 01
M. E. Hoover			38 00
M. N. Hopkins			509 00
Lucy Horton			51 49
Ella House			409 41
C. Howard			447 68
J. Howlin			503 91
Mary Hubbel			131 42
A. Hughes			565 25
Mary L. Hullings			433 83
Annie Hupfer			40 32
S. Husted			445 47
A. Hutson			55 07
S. Jack			559 76
S. E. Jackson			586 25
B. F. Jeffries			369 26
H. V. Jeffries			354 11
H. Johnson			266 33
L. H. Johnson			364 15
M. A. Johnson			369 53
E. Jones			450 34
G. A. Jones			9 08
M. W. Jones			285 99
V. A. Jones			582 90
Jennie Kauffman			328 17
Katie A. Keefe			384 91
Maggie Keefe			4 00
T. Keefe			342 00
Ella Kelly			420 59
Mary E. Kelly			120 90
B. Kennelly			344 75
S. E. Kerper			299 96
M. J. Kersey			110 35
Maria Keys			319 56
Julia King			72 82
M. Kirsch			308 74
R. Korts			249 66
Emma M. Kroger			361 16
M. La Bille			394 50
E. Lackey			$532 58
Rosa La Covey			396 90
Ellen Landvoigt			462 12
E. Laporte			378 88
Mary Larman			223 27
A. V. Lee			334 70
Etta Leonard			12 51
Fannie Littleton			226 98
M. F. Long			531 35
D. Lord			322 09
C. Lusby			408 01
Florence Lusby			363 16
Mary E. Lynch			334 84
H. Macnamee			450 54
Hattie McCabe			306 46
Nettie L. McCampbell			399 26
Annie S. McCarter			332 07
A. McCarthy			348 77
M. M. McCarthy			251 01
Mamie McClelland			241 51
F. M. McCristal			314 49
A. McDowell			419 79
Mary McGinnell			387 70
Minnie F. McGowan			268 31
E. V. McGraw			486 85
Belle J. McIntyre			413 29
A. C McKelden			313 95
L. A. McKenney			410 33
M. J. McLeod			437 96
M. McNamara			342 78
Mary A. McNamara			343 20
Amelia McNulty			316 26
A. R. Mallory			394 66
Jennie E. Manning			248 63
J. E. Mansfield			567 60
M. A. Mapes			334 55
M. E. Marceron			319 76
E. Marche			417 19
E. Marsh			621 25
A. Martin			413 00
Alice Martin			272 47
Lizzie Martin			101 69
S. Martin			440 29
Lu a M. Mason			405 04
C. Maus			609 00
Sarah J. May			460 97
Carrie Meals			171 74
M. G. Meals			218 71
J. A. Milligan			33 66
Sallie Mills			363 01
S. Moens			462 53
Bessie S Mohun			189 08
M. Monday			373 09
B. Mooney			373 77
Laura A. Moore			295 67
Maggie Morgan			248 49
M. Morris			376 17
Lizzie A. Morrow			388 92
M. M. Morrow			280 73
Hattie H. Morse			50 00
Josephine Murphy			267 75
Lizzie C. Murphy			321 66
M. E. Murray			597 69
Jenny Myerberg			172 30
Susie Mylan			345 64
L. M. Nash			500 02
M. J. Neale			170 76
M. B. Norbeck			292 87
May E. Norbeck			63 41
Annie O'Brien			406 67
Margaret O'Brien			507 15
Maggie O'Connell			313 72
M. T. O'Connor			571 46
Lena M. O'Leary			315 61
M. O'Leary			368 56
M. A. O'Neill			537 60
Mary A. Orme			448 95

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
)wner			$422 50	O. J. Somerville			$527 00
ner			318 44	R. Somerville			25 83
T. Pangburn			44 65	S. D. Soper			465 28
'arham			136 15	M. T. Spalding			360 42
ridge			92 55	M. E. Speisser			466 92
.tterson			288 93	Mary M. Sprandel			311 87
Pemberton			309 20	Dora Steele			58 64
'eticolas			75 06	Mamie Stetson			530 47
'hillips			352 76	Ada G. Stewart			179 53
Pierce			353 02	Laura B. Stewart			291 68
Pierre			22 17	Lucy W. Stone			293 23
gott			442 26	Katie Strong			135 00
. Plant			379 76	A. Sullivan			407 90
asants			352 37	M. Sullivan			307 98
)			284 96	Josie M. Summers			284 21
opkins			10 98	Frances Szegedy			354 89
E. J. Porter			232 18	A. O. Talbot			220 30
Potter			15 31	A. Taylor			521 01
roctor			370 93	Georgie E. Tennyson			380 44
Pumphrey			235 06	E. Thomas			368 47
Purdy			569 00	Augusta Thompson			167 17
abbitt			325 64	M. A. Thompson			443 15
ndolph			331 03	Rhoda M. Thorn			338 31
psomer			417 75	D. C. Toole			353 83
d			313 59	Maggie E. Toomey			397 16
lly			386 95	Mary L. Town			181 72
Renehan			321 61	D. Ella Trumbo			563 00
tichards			630 06	Mary E. Twomey			365 10
hmond			281 43	A. E. Tyrrell			586 00
. Riecks			350 10	Lottie B. Tyson			379 58
tiley			362 02	E. V. Walker			222 22
Ritchie			290 52	Ida Walker			360 02
. Robinson			230 88	L. D. Walker			244 11
Robinson			505 05	Katie Walsh			488 70
Rockfellow			268 61	M. Walsh			394 62
ers			431 15	Mary E. Walsh			361 78
ler			458 84	M. Ward			225 54
Ross			316 52	Annie Waters			324 47
Russell			5 65	Nannie Wathen			280 13
sell			520 75	J. E. Watson			408 36
sell			5 67	G. Webster			366 14
Ryan			609 04	H. Webster			247 51
tyder			351 04	E. Wells			596 39
nders			54 88	Sophia L. Wells			373 67
I. Savage			99 51	A. A. West			210 63
Sayers			248 62	Minnie Wetzel			413 99
. Schneider			392 86	B. White			82 52
reiner			490 25	Emma L. Wilke			365 29
ngerson			401 76	E. J. Williams			352 63
ey			454 47	Fannie Wilson			359 67
ry			306 88	J. Wilson			515 10
pherd			257 20	Margarett Wilson			301 44
Shomo			111 89	Mary E. Wilson			339 80
ay			45 09	N. M. Wingate			15 72
ibley			323 86	F. M. Withers			383 95
ierenberg			375 41	Mamie Wood			421 17
L. Smart			460 75	M. Woodend			477 64
mith			470 28	Fannie Woodward			288 95
K. Smith			440 52	Emma Woolsey			186 95
. Smoot			124 82	J. J. Yates			344 00
nee			611 58	E. Young			171 22
P. Snow			6 38	K. Zell			614 29
G. Sollers			208 78				

PUBLIC BINDING.

oberts	193		$1,102 50	Edwin Walmsley		2,494	$1,153 90
. White	310		1,952 00	Geo. W. Hinman		2,501	1,175 47
yrne	313		1,685 59	John Adams		2,400	960 00
Kingsbury	313		1,669 37	James O. Amoss		1,782	712 80
Welsh	39	2,192	1,084 80	Harry Anderson		1,472	588 80
'erkins	307		1,637 35	R. T. Anderson		2,317	926 80
Landvoigt		2,507	1,253 50	Jas. K. Baily		2,701	1,080 40
Lemon		1,873	936 50	Arthur E. Baker		2,348	939 20
ham		2,288	1,144 00	G. O. Barnes		1,863	745 20

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
S. S. Barrett		2,668	$1,067 20	Wm. Gilliard		1,908	$763 20
John F. Barry		2,210	884 00	P. C. Gillon		3,118	1,247 20
J. W. Beall		1,990	796 00	Joseph F. Glenn		1,695	678 00
Jno. L. Bentzler		1,933	773 20	Wm. M. Glover		2,466	986 40
Reinhard Biehl		2,447	978 80	M. B. Gordon		2,487	994 80
Geo. W. Bilyew		1,984	793 60	J. H. Graham		2,481	992 40
Varden Bishop		2,302	920 80	J. W. Gray		2,351	940 40
Jas. T. Blakeney		2,271	908 40	W. L. Griggs		2,428	971 20
George H. Bodensick		2,433	973 20	Edward Grimes		1,567	626 80
Ferd F. Bogia		2,526	1,010 40	R. L. Grinnan		2,466	986 40
Adam Brandt		2,221	888 40	Harry H. Haff		1,773	709 20
W. Breckenridge		16	6 40	H. Hammond		2,105	842 00
Geo. R. P. Britt		2,490	996 00	Joseph A. Handley		2,595	1,038 00
G. S. Britt		2,510	1,004 00	T. J. Hardester		2,453	981 20
J. J. Brunor		1,128	451 20	Michael Harris		969	387 60
Bennis Buckley		2,290	916 00	J. W. Harrison		1,456	582 40
Lee Buckley		917	366 80	Augustus Hartman		1,599	639 60
A. J. Buehler		2,223	889 20	Wilson Harvey		2,313	925 20
J. Fr. Buehler		2,546	1,018 40	J. William Haslett		1,929	771 60
Jas. E. Bullock		2,464	985 60	William Hayes		3,113	1,245 20
Geo. D. Burch		2,304	921 60	Charles Hefferman		2,429	971 60
W. B. Burger		2,012	804 80	John C. Helff		2,274	909 60
John K. Bush		2,452	690 85	A. A. Henry		2,528	1,011 20
Peter Byrne		2,451	980 40	W. L. Hettinger		1,899	759 60
John J. Byrnes		2,388	955 20	H. W. Hobbs		2,435	974 00
Wm. R. Caffrey		1,197	478 80	John C. Hodges		2,278	911 20
Jos. E. Casey		2,507	1,002 80	Henry T. Houck		2,083	833 20
M. F. Casey		307	122 80	William Howlitt		2,439	975 60
John P. D. Caton		2,473	989 20	A. G. Hullett		2,347	938 80
F. H. Chaffee		1,182	472 80	Theo. K. Hynicka		1,057	422 80
Henry Chase		2,477	990 80	Augs. Jacobs		2,267	906 80
Wm. Chedal		2,450	980 00	Andrew Jaeger		1,474	589 60
W. F. Clarkson		2,066	826 40	Geo. K. Jenvey		2,360	944 00
James Clinton		2,699	1,079 60	W. T. Johnston		2,439	975 60
J. C. Cobb		2,367	946 80	James Kane		2,121	848 40
John Cole		2,513	1,005 20	L. P. Keech		2,124	849 60
Joseph Colignon		1,374	549 60	Thomas Keegan		2,252	900 80
C. C. Colné		1,716	686 40	Henry J. Kehr		2,306	922 40
Robt. A. Connell		2,495	998 00	J. B. Keicher		2,282	912 80
Jas. D. Conner		1,778	771 20	William H. Kelly		1,789	715 60
Frank L. Cornwell		2,153	861 20	T. J. Kelly		2,342	936 80
T. D. Corwell		2,647	1,058 80	Geo. W. Kensil		1,692	676 80
S. T. Crawford		2,417	966 80	Frank P. Kimmell		2,213	885 20
F. R. Cunningham		1,934	773 60	John F. King		1,279	511 60
A. S. Davidson		2,342	936 80	Jno. E. Knight		1,668	667 20
H. C. Dobbs		2,484	993 60	C. A. Knockey		2,684	1,073 60
John Doherty		2,492	996 80	C. M. Knott		915	366 00
Wm. P. Dowden		1,007	402 80	Igna M. Knott		2,272	908 80
Horace C. Dowling		1,195	478 00	C. H. Koehler		2,522	1,008 80
Arthur C. Delevingne		1,145	698 00	Samuel Koockogey		2,407	962 80
L. W. Denham		2,306	922 40	H. R. Koon		2,408	963 20
Jas. E. Duvall		1,302	520 80	Thos. L. Koontz		2,250	900 00
Frank H. Eberle		2,152	860 80	Chas. H. Kreuer		108	43 20
H. T. Eckart		2,517	1,006 80	Augustus Kuhner		2,637	1,054 80
C. R. Eckloff		2,383	953 20	Gustave Lancer		1,536	614 40
Edwd. T. Eckloff		2,484	993 60	Jno. A. Landvoigt		2,521	1,008 40
C. Thos. Elwood		2,566	1,026 40	D. P. Leach		2,389	955 60
Geo. W. Engel		1,826	730 40	John I. Leitch		2,725	1,090 00
H. C. Espey		2,536	1,032 80	S. W. Lewis		2,437	974 80
J. A. B. Espey		2,477	990 80	H. S. Linker		2,204	881 60
W. G. Evans		2,676	1,070 40	R. G. Lowey		2,327	930 80
D. F. Fallon		1,304	521 60	R. A. Lyon		2,504	1,001 60
George Finch		2,155	862 00	E. McCarter		1,645	658 00
F. Fischer		16	6 40	J. H. McCormick		2,046	818 40
H. C. Fish		1,813	725 20	J. F. McDonald		1,545	618 00
Geo. W. Fisher		2,530	1,012 00	William McLanahan		1,231	492 40
Chas. Fowler		1,329	531 60	William McLane		2,371	948 40
J. W. Fox		2,575	1,030 00	James McManus		530	212 00
Robert T. Fraily		2,325	930 00	Chas. A. McNamee		1,337	534 80
C. Franz		2,348	939 20	R. A. McPherson		2,504	1,001 60
Arthur H. Frisbee		2,161	864 40	Joseph Maddren		2,476	990 40
J. F. Fuller		2,475	990 00	J. S. Maddren		2,519	1,007 60
Wm. Gaisberg		2,505	1,002 00	William Maloney		2,055	603 75
Jos. E. Gally		1,467	586 80	Robt. H. Marcellus		2,434	973 60
John Gantley		2,017	806 80	William Marshall		1,892	756 80
John M. Gantley		2,349	939 60	John Masterson		2,145	858 00
J. W. Gibson		2,476	990 40	John Matthews		2,414	965 60

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
s Mattimore		572	$228 80	Alfred Thomas		2,337	$934 80
H. Maurer		2,364	945 60	David A. Thompson		1,881	752 40
. May		2,597	1,038 80	James Thomson		2,481	992 40
han		2,067	826 80	W. N. Tincher		1,268	507 20
w Melville		1,179	471 60	Dennis Toomey		1,983	793 20
etcalf		2,354	941 60	Geo. L. Tracy		1,880	752 00
Menshaur		20	8 00	Chas. E. Tretler		2,491	996 40
d Meyer		780	312 00	T. M. Triplett		2,429	971 60
. Miller		2,117	846 80	John F. Van Horn		2,618	1,047 20
Miller		2,243	897 20	R. W. Wade		1,312	524 80
Moore		801	320 40	Fred Wagner		2,315	926 00
. Moore		2,329	931 60	E. Wakeling		1,757	702 80
Morgan		1,591	636 40	John Walde		2,023	809 20
Morris		2,496	998 40	Chas. H. Walker		2,576	1,030 40
Morris		2,436	761 10	Edwin R. Waters		2,478	991 20
Morrison		2,380	952 00	Chas. W. Wells		2,130	852 00
otherhed		1,608	643 20	H. L. Wells		2,455	982 00
Munn		2,296	918 40	John E. Welsh		1,900	760 00
Murphy		2,391	956 40	Geo. K. White		1,557	622 80
Murphy		1,606	642 40	Geo. M. White		2,335	934 00
Nalley		1,593	637 20	John White		2,121	848 40
Nalley		2,441	976 40	Geo. A. Whitford		2,503	1,001 20
h		2,230	892 00	H. Wiese		2,265	906 00
. Nicholson		1,512	604 80	Chas. S. Willis		2,363	945 20
A. O'Donnell		1,707	682 80	A. L. Wood		493	197 20
Reilly		2,126	850 40	W. E. Wright		2,426	970 40
s J. Orem		613	245 20	Chas. P. P. Wroe		2,505	1,002 00
W. Orem		2,538	1,015 20	Robt. H. Zimmerman		741	296 40
. Patterson		2,389	955 60	John A. Flather		2,397	569 45
E. Peissner		2,698	1,079 20	Charles S. West		2,451	582 05
endel		1,682	672 80	Richard Murphy		2,353	518 55
Phillips		1,233	493 20	George B. Harleston		2,295	505 25
hilpitt		1,796	718 40	George B. Bury		2,362	521 65
oplowsky		2,674	1,069 60	Frank Donn		2,331	514 80
Portch		1,311	524 40	Clinton Groshon		2,299	507 75
F. Price		2,535	1,014 00	Harry A. Lammond		2,227	484 70
ridgeon		1,334	533 60	Frank A. Kennedy		2,248	479 95
Prior		2,194	877 60	Chas. Daly		1,121	266 55
Pumphrey		2,361	944 40	John J. Burns		2,475	495 00
yemont		2,275	910 00	George Keyser		2,280	448 90
atcliff		2,473	989 20	Theo. Mack		2,357	451 87
lathvon		2,416	966 40	Wm. G. Walde		2,273	450 40
Read		235	94 00	H. C. Willis		2,469	452 41
eiher		61	24 40	John Shea		2,452	442 60
n B. Reilly		553	221 20	John G. Pettibone		2,158	376 23
bert		183	73 20	William J. Flynn		1,596	295 63
Richardson		2,520	1,008 00	Lewis F. Holden		2,101	362 24
iddick		514	205 60	Thomas Brennan		2,470	425 30
ingold		2,394	957 60	W. F. Webster		2,429	418 70
d Roberts		1,012	404 80	Jeremiah A. Connell		2,236	350 96
. Rogier		2,502	1,000 80	Arthur Simmons, jr		2,446	373 75
swag		2,483	993 20	B. Basil N. Friel		2,307	352 04
Ryan		2,031	812 40	Wm. E. Lee		2,439	364 27
s		747	298 80	John T. Kearney		2,461	358 12
n Scott		2,481	992 40	Jas. F. Faherty		2,442	356 00
heaff		2,340	936 00	Bernard White		2,402	333 76
herman		244	97 60	John Keefe		2,273	284 10
ettle		2,213	885 20	W. J. Butler		1,804	225 49
Siebert		2,602	1,040 80	Jas. J. Brosnahan		1,019	127 37
Simons		2,489	995 60	Wm. Johnson		311	38 87
Slater		2,054	821 60	Frank Michael		296	37 00
mith		1,834	733 60	L. J. Burse		2,500	701 68
d J Smith		1,227	490 80	Stella Barrett		840	210 00
. Smith		1,222	488 80	Maggie Brosnan		1,100	275 00
Smith		2,460	984 00	Maggie Bryerton		2,434	608 50
s Songster		2,704	1,081 60	F. E. Carter		2,390	597 00
W. Sparks		2,372	948 80	Annie Chapman		533	133 25
. Stewart		363	145 20	C. Crooks		2,453	613 25
F. Stewart		576	230 40	E. D. Davis		1,960	490 00
w. Stockett		1,964	785 60	Marion Hough		413	107 75
Stockett		2,445	978 00	Lula Hyson		2,224	523 30
Stockman		2,017	806 80	B. Knott		2,437	609 25
ratton		1,842	736 80	B. F. Leach		2,342	585 50
d Sweetman		2,695	1,078 00	M. E. Lenman		2,472	618 00
Swift		1,866	746 40	M. J. Lovell		2,263	565 75
w Taff		2,714	1,085 60	Annie McRae		512	128 00
. Taylor, jr		1,082	432 80	Mary C. Manning		887	158 84

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
Anna I. Meloy		2,478	$619 50	M. Henry		2,165	$497 95
Sallie Micheal		2,501	625 25	Mary C. Hines		800	184 00
Jane E. Minor		2,496	624 00	Florence Hoffman		2,471	616 63
Kate H. Montfredy		2,303	575 75	Winonie Holland		2,380	547 40
Ella Riley		855	213 75	E. J. Holohan		2,418	556 14
L. E. Robinson		2,366	591 50	E. J. Hooper		2,358	542 34
Kittie R. Powell		1,481	370 25	Ora E. Hubler		98	22 54
Bettie Schiller		2,290	572 50	G. Hunter		2,408	553 84
Kate G. Smith		1,360	340 00	L. A. Hyde		2,424	557 52
Maggie E. Spriggs		2,214	553 50	M. Kate Hynes		2,443	561 89
C. L. Wirt		525	131 25	Kate Jacobs		1,862	428 26
E. M. Yerger		2,493	623 25	Lottie E. Jacobsen		2,378	546 94
Agnes Adams		536	123 28	Jennie A. Jenkins		2,227	512 21
Alice Alexander		2,465	566 95	Mary M. Jenkins		2,388	549 24
Maria Anderson		2,173	499 79	Ella A. Johnston		2,178	500 94
M. L Andrews		1,007	231 61	E. E. Johnston		2,186	502 78
M. H. Atwell		2,362	543 26	Kate Kelly		2,444	562 12
Hattie D. Baird		2,383	548 09	E. Kepner		2,403	552 69
M. E. Barker		2,157	496 11	Rose Kleiber		2,269	521 87
May Barnett		358	82 34	E. A. Leonard		2,504	575 92
Mamie E. Barry		1,540	354 20	Lillie Lewis		500	115 00
Mary Barry		1,576	362 48	M. G. Lillie		1,764	405 72
Mary E. Barry		2,318	533 14	P. M. Lineaweaver		2,312	531 76
B. M. Bartlett		1,580	363 40	Rosa Lydick		428	98 44
C. A. Bartlett		2,290	526 70	Ellen Lynch		2,369	544 87
C. C. Beatty		203	46 69	Ida E. Lyons		2,485	571 55
Josephine E. Bennett		2,453	564 19	Nettie McCabe		1,982	455 86
Kate Bennett		1,488	342 24	E. McCarthy		2,250	517 50
Annie Berry		156	35 88	Albert McGill		28	7 00
Carrie A. Booth		2,433	559 59	Innocentia McGill		2,361	543 03
Adelia A. Bowen		2,387	549 01	E. L. McLain		2,111	485 53
M. R. A. Boyd		2,041	469 43	Katie McNally		2,401	552 23
Donna Buchanan		2,115	486 45	Mary McNamara		518	119 14
Minnie E. Burford		386	88 78	Jennie McPherson		1,541	354 43
M. J. Burkholder		470	108 10	Katie A. Mandley		416	95 68
Jennie Burns		2,198	505 54	M. Markham		536	123 28
Cora Burr		367	84 41	Maggie A. Meehan		2,218	510 14
R. Bushee		1,680	386 40	Emma Miller		1,340	308 20
M. E. Calvo		1,264	290 72	Margaret Mitchell		2,422	557 06
Virginnia Cammack		1,797	413 31	Rittie Mitchell		2,327	535 21
Kate Cantine		1,781	409 63	Gertrude Moore		1,590	365 70
Mary Carpenter		2,407	553 60	Sallie Morgan		2,208	507 84
Lena Carr		303	69 69	D. A. Mortimer		1,140	262 20
L. A. Caulk		2,432	559 36	Katie A. Murphy		1,380	317 40
E. H. Clagett		336	77 28	Rebecca Orr		2,386	548 78
M. B. Clagett		1,997	459 31	Minnie Osborne		1,638	376 74
Maggie Colbert		2,423	557 29	M. E. Owner		127	29 21
H. Collison		2,325	534 75	L. Piggott		2,444	562 12
M. A. Connell		2,363	543 49	Lydia J. Pixley		1,758	404 34
Carrie Cowling		2,442	561 66	Fannie Plumer		296	68 08
Indiana Cowling		456	104 88	Josephine Plumer		1,818	418 14
Maggie Curtis		2,378	546 94	Beatrice Prather		668	153 64
Ellen Darcy		2,487	572 01	Mary A. Prather		955	219 65
Maggie Devlin		2,223	511 29	E. G. Proctor		2,234	513 82
A. Dickins		1,375	316 25	Sadie Pruette		606	139 38
Ellen Danaldson		934	214 84	Agnes H. Reid		2,301	529 23
Mary F. Dove		2,345	539 35	Annie Reilly		2,430	558 90
S. K. Feltham		1,911	439 53	M. Louise Reilly		2,350	540 50
Ella M. Ferguson		1,544	355 12	Amelia T. Ritter		2,239	514 97
Jennie H. Fitch		2,111	485 53	Lon Rogers		194	44 62
Mary H. Fitz Patrick		2,378	546 94	Laura L. Rugers		1,553	357 19
Minnie Fordan		2,295	527 85	I. M. Rutherford		1,221	280 83
Emma B. Furlong		162	37 26	E. V. Sanderson		2,053	472 19
H. A. Gambrill		624	143 52	E. J. Schafer		2,221	510 85
Jennie Gates		2,219	510 37	Josephine Schwartz		2,372	545 56
L. Gaughran		2,178	500 94	Mary Shock		2,346	539 58
Mary S. Gordon		527	121 21	Eva P Simmons		2,429	558 67
Jennie Goss		2,366	544 18	S. E. Sisson		2,252	517 96
Josie Goszler		2,118	487 14	Fannie R. Smith		2,334	536 82
Annie E. Gross		1,561	359 03	K. Stevens		440	101 20
Macie G. Harding		2,270	522 10	Rosie H. Stoll		2,436	560 28
S. G. Hayden		262	60 26	Frances Straub		1,735	399 05
Vivian Hayden		109	25 07	Theresa Straub		597	137 31
M. R. Hendley		2,303	529 69	J. M. Sullivan		2,301	529 23
Christena Hendricks		2,161	497 03	Mary Sullivan		40	9 20
S. E. Henning		2,278	523 94	Victoria Sweeney		2,504	575 92
Lida Henry		260	59 80	Maggie H. Taylor		167	38 41

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed. Days.	Time employed. Hours.	Amount received.
B. Throckmorton		2,007	$461 61
. Topham		2,368	544 64
witchell		1,707	392 61
ose		2,381	547 63
alker		536	123 28
Waller		2,305	530 15
Vashington		514	118 22
Whaley		2,367	544 41
iams		797	183 31
Villiamson		2,368	544 64
Vootton		2,372	545 56
Wright		72	16 56
. Carter		1,863	310 50
A. Carter		625	104 17
. Catlin		2,437	406 19
hapman		2,345	390 85
Chase		2,401	400 18
T. Coke		2,508	418 02
Crider		2,059	343 15
Dodson		2,503	417 17
Doyle		216	36 00
. Durham		1,768	294 67
D. Durham		728	121 34
Fields		2,485	414 17
Flaherty		2,360	393 34
M. Humes		2,437	406 17
. Keys		2,138	356 34
M. Loomis		235	39 17
Ardle		2,432	405 34
. McElfresh		2,433	405 51
W. McGill		1,192	209 67
McGoldrack		2,429	404 83
th Mangan		2,479	413 16
. Manning		1,442	240 35
Miles		2,456	409 33
orrison		2,438	406 32
Noonan		2,352	392 00
Connor		1,995	332 53
O'Prey		2,463	410 49
V. Robinson		2,512	418 67
r A. Searle		1,979	329 84
e Stevens		2,509	418 17
Valmsley		2,472	412 01
Walters		2,351	391 84
Vustenfield		629	330 76
anford		2,195	987 75
Worthington		2,235	1,005 75
Pettit		2,314	867 75
herwood		2,402	860 30
Kelly		2,478	867 30
. Hammond		2,749	962 15
Campbell		464	145 00
Cavanaugh		1,728	508 00
. Ready		2,369	710 70
Spear		2,510	753 00
keen		2,458	737 40
Fest		1,556	464 40
. Ferguson		2,437	731 10
illings		2,355	654 57
Baxter		2,369	663 23
. Allen		318	79 50
s Allen		2,469	617 25
mbrose		1,094	367 58
eatty		2,540	635 00
kingham		384	98 07
annon		428	107 00
l Carroll		2,571	642 75
A. Claxton		1,468	367 00
Coleman		2,460	615 00
Coleman		2,256	564 00
m Cruse		2,925	731 25
unningham		2,473	618 25
. Cunningham		2,474	618 50
E. Dent		772	193 00
ard		2,258	564 50
. Ficklin		645	161 25
A. Gleeson		424	106 00
Freeman R. Green		873	$218 25
N. Hall		2,535	633 75
J. K. Hardesty		296	74 00
Benjamin Holmes		2,600	653 30
W. E. Johnston		850	212 50
Wm. T. Knowles		416	104 00
Wm. Landers		952	238 00
H. H. Lazelle		2,597	649 25
James Lee		425	106 25
Jas. A. Lee		2,517	629 25
W. E. Lockland		188	47 00
Robert Logan		424	106 00
Burr Lucas		2,266	566 50
E. G. Luce		2,292	573 00
George Lusky		2,045	511 25
C. McDevitt		2,624	656 00
W. McKinlay		2,385	596 25
C. C. McKinney		1,211	302 75
John F. Maginnis		2,456	614 00
Louis N. Moss		2,137	534 25
James Nally	13	2,823	735 00
L. W. Pigott		160	40 00
Geo. R. Price		2,502	625 50
Morgan Priggs		112	28 00
James H. Roberts		44	11 00
Jacob Robinson		2,952	738 00
Frank Rowe		2,371	592 75
D. E. Ritchie	14	2,509	658 75
Augustus Schwartz		2,432	608 00
J. H. B. Smallwood		57	14 25
W. T. Smith		2,496	624 00
J. H. Snapp		2,200	550 00
C. C. Stewart		2,932	733 00
Arthur Summers		2,498	624 50
Henry Thomas		2,666	666 50
W. A. Tilley		856	214 00
B. H. Waters		420	105 00
George Williams		2,486	621 50
Edw. J. Wilver		2,504	626 00
C. P. Dowden		2,498	475 25
Chas. F. Ford		2,042	382 87
Exum M. Hussey		513	96 19
Sam. Stevens		662	124 13
Wm. H Murphy	53		159 00
Xenophon Peck	59		147 50
Russell Barnes	48		108 00
J. H. Caldwell	49		110 25
A. R. Hilton	61		137 25
John A. Hyman	62		139 50
Otto Leisering	52		117 00
Will E. Miller	55½		124 59
P. R. Noone	11		24 75
Moses Smith, jr	60		135 00
PIECEWORK.			
Mary Anderson			326 73
Mary F. Ashburn			54 68
Ella Bagley			68 99
Mary E. Bailey			318 74
S. Bailey			111 76
Kate Ball			350 70
Mary Barnett			162 27
Stella Barrett			13 00
Elizabeth A. Bell			312 57
Eugenie Blankman			135 91
Mary V. Bowler			89 43
Maggie Brosnan			1 40
Mary E. Brown			257 29
Minnie E. Burford			204 19
Ada Burr			366 01
Cora Burr			197 82
M. L. Butler			60 98
Annie M. Cavanagh			362 97
Mary Chamberlin			337 16
Sarah E. Clayville			176 55
Julia F. Clokey			357 4[illegible]

No. 20.—*Persons employed in the public printing, &c.*—Continued.

Name.	Time employed. Days.	Time employed. Hours.	Amount received.
A. A. Colclesser			$372 62
Sara Collins			381 44
Alice Corcoran			371 91
E. A. Cox			380 89
F. F. Crupper			401 96
Isabella Cunningham			341 04
Mary Daniels			373 30
Nannie Daniel			321 66
S. C. Darby			67 33
Ellen Donaldson			115 06
M. E. Dow			301 31
Kate Dowden			366 81
Maud Dubant			275 07
P. Dubant			86 05
C. Durham			369 81
Ronie Elms			311 48
Anna Erb			373 30
Mary Farrell			66 60
M M. Farrar			54 24
Lucy Fister			47 91
Katie Flemming			336 12
S. W. Folk			372 70
Emma V. Ford			50 49
Kate Fox			406 43
A. C. Francis			368 88
Emma B. Furlong			92 30
G. Gantt			370 65
Minnie Georges			371 77
L. Gibney			336 68
Frances Graves			355 82
Georgianna Groshon			92 94
Nettie A. Groshon			186 78
Belle Halliday			375 14
Julia Hanlan			336 74
Katie E. Harrington			375 07
Carrie F. Hartwell			337 03
S. G. Hayden			233 82
Louisa Henry			374 79
Mary E. Hill			405 00
W. J. Hodson			266 55
Mary Honan			394 96
Ora E. Hubler			354 40
Annie A. Hurley			312 91
Emma Jeffries			304 44
Annie E. Johnston			322 06
Mary Joyce			343 51
Annie R. Kealey			82 35
A. B. Kleinheim			356 57
Amanda Klotz			65 68
Delia C. Lang			62 11
M. A. Lenihan			56 32
Carrie E. Lewis			368 55
M. G. Lillie			89 29
Annie E. Long			62 12
Ella F. Long			338 61
Rosa Lydick			235 41
Johanna Lyons			180 94
Kate Lyons			63 87
M. A. McGraw			53 87
E. McKenzie			340 56
Marion McGivern			278 75
Carrie B. McKnight			$86 34
Hattie McVhill			35 33
Sallie H. Macnichol			333 61
Ebenetta Magoffin			73 61
M. V. Martin			374 81
L. A. Massie			22 32
J. Miller			118 41
Julia T. Miller			55 90
Amelia Moreno			390 17
Katie Morris			57 14
L. T. Morris			374 29
Mary Mullen			234 96
Mary A. Murray			397 90
Mary Nasser			66 73
Mary Nolan			303 65
Maggie O'Dea			23 75
Kate O'Gorman			367 16
M. E. Owen			317 27
Millie Parker			333 73
Martha K. Payne			66 39
Lou M. Pemberton			320 48
W. A. Plant			29 10
Kattie R. Powell			20 11
Kate M. Price			371 29
Sadie Pruette			264 69
M. Purcell			360 90
Mary A. Rearden			67 19
Julia Ready			63 50
Ella M. Ridgely			61 01
Clara J. Robinson			359 31
E. L. Rollins			330 22
Lucy V. Ruby			367 25
Annie V. Shaw			369 43
L. A. Shepherd			44 79
H. Sherwood			166 29
Margaret Shields			367 71
Mary J. Sinclair			316 78
Kate G. Smith			148 91
Mary A. Smith			97 06
Mary Snow			267 34
Sarah Sorrell			204 30
Ella M. Springer			341 04
M. J. Stanley			413 56
C. Stanton			361 45
K. Stevens			206 34
Sue Stevens			67 81
Martha Stewart			83 89
Maggie Sullivan			61 41
Rosie Sullivan			26 67
Cheney Swain			294 26
Ella Torrey			45 37
L. F. Walker			356 03
J. F. Warwick			19 00
E. E. Wernwag			364 27
Julia A. Wolff			358 29
S. L. Wood			33 19
Martha Wilkins			328 43
Margaret Williams			213 88
L. E. Windsor			363 03
Josie Wright			320 06

No. 21.—*Statement showing the number of persons employed on the Congressional Record for the fiscal year ending June 30, 1885, with the length of time each has been employed and the amount each has received.*

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
Aven Pearson	313		$1,878 00	Ada M. Greenwood		161	$30 19
W. H. Hickman	195		1,224 00	Mary Hill		20	4 20
A. F. Bloomer	9	234	178 02	Jennie Jackson		88	16 50
A. T. Cavis		1,092	578 76	M. V. Keenan		146	27 37
W. R. Chipley	24		144 00	Elizabeth Litsinger		367	68 81
H. A. Coolidge	117	321	872 13	Bridget McNamara		208	39 00
A. H. S. Davis	45		270 00	Jennie McNamara		61	12 81
W. F. Dunn	121	463	971 39	Annie Mitchell		305	57 18
A. McNelly	120	348	896 25	Mary O'Brien		147	27 56
Ed. Morgan		350	185 50	E. M. Proctor		164	30 75
C. S. Myers	105	262	768 86	Mary E. Ragan		397	74 43
M. Noyes	120	485	977 05	Catherine Schermerhorn.		152	28 50
M. H. Kendig	102	282	672 80				
W. R. Steele	105	18	639 54	Susie V. Sinon		989	207 69
John W. Thomas	121	509	995 77	Maggie Sullivan		155	32 55
F. B. Wallace	221	328	899 84	Henrietta Tompkins		930	196 56
A. W. Webb	12	16	80 48	M. V. Wheeler		55	10 31
E. M. Wheat		96	50 88	Adah Winckelman		408	85 68
W. S. Brooks	108	280	747 93	W. T. Benjamin		605	151 25
C. M. Cyphers	121	328	833 27	H. C. Bolden		198	49 50
Chas. I. Canfield		955	477 50	John Dice		143	35 75
Charles Wright		889	444 50	C. C. Haddock		93	23 25
A. G. Allison	101		505 00	Wm. T. Hall		148	37 00
Al. Cottle	60		300 00	Robt. C. Langley		249	62 25
Thomas Ellis	2		10 00	G. W. Mulloy		1,153	288 25
R. P. Fithian	8		45 00	C. H. Robinson		188	47 00
W. J. Fowler	119	496	793 40	Geo. Shurland		64	16 00
S. M. Gordon	70	16	356 40	Moses Smith		304	76 00
James E. Reese	3		15 00	J. B. Stoops		160	40 00
H. A. McDonald		648	259 20	Perry Brown		801	352 44
Thos. McCrea	42	227	300 80	H. C. Cowell		736	323 84
J. W. Miller	19		95 00	W. B. Kelly		736	323 84
F. H. Trenholm	59	69	322 60	Paul Livingston		722	317 68
W. A. Smith	108		432 00	John E. Parker		326	143 44
Ed. Reinmuth	124		186 00	George Recar		167	73 48
Chr. Wustenfeld		10	5 20	S. L. Rowzee		884	388 96
John F. Swiggard	122	78	385 50	Richard Berry		465	232 50
Stephen Caldwell	121	505	489 25	J. Paul Chambers		233	121 16
Chas. T. Bliss		145	36 25	W. H. Moran		928	538 24
U. P. Breazeale	101	160	292 50	R. B. Harford		54	21 60
John Buckman		27	6 75	John W. Maxwell		225	90 00
John F. Gates		528	132 00	Will P. Reese		129	51 60
Josiah S. Green		10	2 50	A. J. Houghton		156	48 75
P. R. Noone	120	56	314 50	James A. Hewes		110	28 00
G. A. Traylor	13	1,231	340 25	Chas. J. Ortlip		9	2 81
A. E. Sardo		124	71 92	G. L. Pearson		111	34 69
Squire A. Cameron		152	60 80	Hod Reynolds		72	22 50
Wm. S Cameron		66	26 40	Chas. F. Burch		195	58 50
John F. Clarkson		173	69 20	Harry A. Gwin		72	21 60
Ira E. Cole		376	150 40	James F. Lacey		119	35 70
D. H. Denham		1,044	417 60	C. A. Rice		190	57 00
Edward Duff		104	41 60	John Weckerly		4	1 20
F. H. Fitnam		232	92 80	Alpha B. Beall		68	17 00
J. H. Furbershaw		154	61 60	James R. Bell		292	73 00
A. W. Graham		880	352 00	Wm. H. Berry		49	12 25
John F. Hutcherson		10	4 00	W. H. Britten		782	195 50
J. A. Lee		20	8 00	C. N. Buckland		77	28 87
Thomas H. Owings		305	122 00	M. Clark		3	75
Jno. H. Robb		410	164 00	W. S. Clarke		118	29 50
C. B. Appler		38	7 98	G. J Crenshaw		36	9 00
Jennie Baylie		228	42 75	J. W. Freeman		14	3 50
Fannie Beamer		321	67 41	John F. Hogan		342	85 50
L. B. Best		642	134 82	J. C. Johnson		8	2 00
Catharine Burke		281	59 01	John Johnson		260	65 00
Annie Carpenter		940	197 40	John Lee		224	56 00
Josephine Carlisle		142	26 62	F. B. Lloyd		54	13 50
M. I. Chaney		152	26 62	D. P. Lynch		15	3 75
Joanna Corridon		38	7 98	Patrick McNamee		14	3 50
Delia Cremer		714	149 94	B. F. Oder		24	6 00
Nellie Donohue		351	65 81	Jno. X. Phillips		8	2 00
Libbie A. Flahavhan		35	7 35	W. E. W. Rowe		80	20 00
Annie Fuller		100	18 75	R. E. Scott		623	155 75
Lizzie M. Garvey		162	30 37	Rush C. Steele		18	4 50
Annie Gaughran		411	77 06	R. L. Todd		586	146 50
L. V. Godey		75	15 75	James M. Toy		15	3 75

No. 21.—*Persons employed on the Congressional Record, &c.*—Continued.

Name.	Time employed.		Amount received.
	Days.	Hours.	
John N. Van Lew		26	$6 50
Clayton Webster		839	209 75
James O. Amos		5	2 00
R. T. Anderson		44	17 60
Arthur E. Baker		5	2 00
S. S. Barrett		4	1 60
John L. Bentzler		4	1 60
John F. Berry		8	3 20
Reinhard Biehl		5	2 00
George W. Bilyew		4	1 60
Varden Bishop		432	172 80
James T. Blakeney		32	12 80
Adam Brandt		236	94 40
George R. P. Brit		5	2 00
J. J. Brunor		1,179	471 60
Dennis Buckley		4	1 60
Peter Byrne		5	2 00
John J. Byrnes		24	9 60
William R. Caffrey		776	310 40
F. H. Chaffee		4	1 60
Henry Chase		4	1 60
William Chedal		4	1 60
W. F. Clarkson		5	2 00
John Cole		4	1 60
Joseph Colignon		969	387 60
C. C. Colné		262	104 80
James D. Conner		5	2 00
Frank L. Cornwell		174	69 60
T. D. Cornwell		4	1 60
Arthur C. Delevingne		5	2 00
L. W. Denham		4	1 60
John Doherty		36	14 40
James E. Duvall		655	262 00
Frank H. Eberle		32	12 80
George W. Engel		4	1 60
J. A. B Espey		36	14 40
W. G. Evans		5	2 00
D. F. Fallon		1,148	459 20
George W. Fisher		5	2 00
Charles Fowler		5	2 00
J. W. Fox		4	1 60
J. F. Fuller		4	1 60
Joseph E. Gally		215	86 00
William Gaisberg		4	1 60
John Gantley		4	1 60
John M. Gantley		5	2 00
William Gilliard		4	1 60
Joseph F. Glenn		4	1 60
William M. Glover		20	8 00
M. B. Gordon		36	14 40
J. H. Graham		36	14 40
R. L. Grimran		36	14 40
H. Hammond		4	1 60
J. W. Harrison		1,211	484 40
Augustus Hartman		5	2 00
Wilson Harvey		5	2 00
Charles Heffernan		36	14 40
H. W. Hobbs		4	1 60
John C. Hodges		5	2 00
A. G. Hullett		4	1 60
Theodore K. Hynicka		882	352 80
Augustus Jacobs		464	185 60
Andrew Jaeger		1,149	459 60
W. T Johnston		19	7 60
J. B. Keleher		36	14 40
Wm. H. Kelly		201	80 40
Geo. W. Kensil		790	316 00
John F. King		955	382 00
Jno. E. Knight		32	12 80
C. A. Knockey		4	1 60
Samuel Koockogey		4	1 60
Thos. L. Koontz		4	1 60
Jno. A. Landvoigt		9	3 60
D. P. Leech		36	14 40
S. W. Lewis		4	1 60
J. H. McCormick		5	2 00
Joseph Maddren		36	14 40
William Maloney		12	4 80
Robt. H. Marcellus		4	$1 60
John Masterson		5	2 00
John Matthews		4	1 60
Thos. O. May		5	2 00
J. Meehan		28	11 20
Andrew Melville		974	389 60
Chas. F. Miller		4	1 60
R. W. Moore		5	2 00
Wm. S. Moore		4	1 60
Henry Morgan		1,131	452 40
Geo. O. Morris		4	1 60
J. C. Motherhed		40	16 00
D. J. Munn		5	2 00
Daniel Murphy		4	1 60
D. A. Murphy		208	83 20
C. K. Nalley		5	2 00
E. Nash		4	1 60
Wm. M. Nicholson		5	2 00
George A. O'Donnell		5	2 00
Geo. W. Orem		5	2 00
John H. Patterson		4	1 60
Joseph E. Peissner		4	1 60
T. F. Pendet		4	1 60
Milton Phillips		913	365 25
Edwin F. Price		5	2 00
John Pridgeon		933	373 20
Geo. G. Prior		498	199 20
D. C. Ringgold		4	1 60
Richard Roberts		1,153	461 20
Chas. G. Rogier		4	1 60
Jas. A. Ryan		4	1 60
H. Sage		470	188 00
William Scott		36	14 40
W. S. Sheaff		5	2 00
C. P. Shettle		4	1 60
Frank Siebert		36	14 40
W. P. Slater		4	1 60
Fred P. Smith		913	365 20
Thomas Songster		4	1 60
Chas. W. Sharks		4	1 60
Thos. F. Stewart		303	121 20
Jas. A. Stockman		4	1 60
W. Edw. Stockett		731	292 40
S. E. Stratton		4	1 60
Richard Sweetman		4	1 60
Alfred Thomas		5	2 00
David A. Thompson		5	2 00
Chas. B. Tretler		5	2 00
John F. Van Horn		5	2 00
R. W. Wade		680	272 00
E. Wakeling		4	1 60
John E. Walsh		8	3 20
Chas. W. Wells		12	4 80
Geo. K. White		4	1 60
W. E. Wright		36	14 40
Robt. H. Zimmerman		4	1 60
M. L. Andrews		239	215 97
Mary Barry		188	43 24
M. E. Calvo		357	82 11
Virginia Cammack		500	115 00
Maggie Devlin		8	1 84
Ella M. Ferguson		8	1 84
M. R. Kendley		4	92
Lida Henry		243	55 89
D. A. Mortimer		501	115 23
Katie A. Murphy		422	97 06
Minnie S. Osborne		8	1 84
Lydia J. Pixley		8	1 84
Mary Sullivan		741	170 43
F. A. West		855	238 90
Freeman R. Green		830	207 50
Wm. T. Knowles		236	59 00
PIECEWORK.			
E. N. Ash			70 00
Franklin Amann			155 55
C. W. Aughinbaugh			157 40

21.—*Persons employed on the Congressional Record, &c.*—Continued.

e.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
			$312 30	Owen J. Mealy			$134 95
			10 25	J. W. Metzung			231 80
			28 15	C. K. Michael			239 65
			191 60	J. W. Miller			233 25
			232 45	Lemuel E. Miller			122 20
y			257 10	John F. Moore			295 60
well			255 15	T. P. Moore			153 50
			26 20	Orlando S. Montz			379 80
r			131 20	Albert K. Mumdheim			363 95
			19 20	Edward P. Murray			304 70
ower			335 95	E. Newbrough			287 10
le			3 20	E. S. Nicholson			161 40
			106 95	W. E. Nivens			113 60
ll			52 80	Edwin Nott			379 95
r			158 05	John O'Neill			250 40
ll			329 85	Charles R. Parsons			118 35
			26 35	George W. Paxton			166 20
			180 95	Charles P. Peake			97 55
ns			102 05	Frank L. Post			92 75
way			337 35	W. J. Randolph			23 40
			301 15	James E. Reese			415 00
			481 35	G. A. Rinehart			421 60
n			192 10	C. H. Robinson			35 50
			345 15	D. M. Sandidge			94 00
ingham			28 75	Charles H. Sawyer			265 55
			19 50	Martin Schram			99 85
n			95 60	John H. Shaw			94 10
			10 15	John P. Sheehan			358 55
r			122 30	E. E. Shott			506 65
			23 10	Charles Payne Smith			302 00
ght			400 95	W. H. Smith			154 90
ity			422 15	C. S. Stevenson			495 20
			3 50	Frank W. Stratton			94 70
er			88 55	C. W. Straughan			211 45
l			225 25	John R. Sturgis			154 35
le			244 65	H. S. Sutton			248 35
t			306 15	T. J. Swander			15 80
			93 80	George W. Toland			39 45
			33 35	E. S. Tompkins			40 40
			35 80	H. M. Towner			425 15
			447 90	Andrew Turnbull			160 85
er			149 95	A. W. Van Dyke			241 45
rancis			428 20	John H. Wheeler			40 10
er			98 10	W. J. White			424 55
			290 90	A. Williams			407 75
ham			521 70	Thomas A. Williams			29 40
reenfield			302 70	Charles T. Wood			109 30
s			39 65	John P. Woods			344 25
an			22 30	Charles Wright			109 70
ll			88 70	William H. Wyant			40 05
a			80 80	D. P. Wyman			178 50
per			146 05	W. L. Young			27 75
g			42 30	H. Zucker			283 05
y			13 80	M. P. Adamson			82
			218 90	Ella Ahern			1 59
			217 85	L. L. Andrews			22 08
			192 25	M. Anthony			45
			26 45	A. W. Bacon			205 25
			249 40	Bettie Baker			7 35
uffman			316 70	F. Baker			3 14
			464 95	R. V. Baker			11 76
y			53 10	Isabella Ball			11 84
er			115 95	E. E. Banks			43 36
			241 90	Mary Baptista			1 65
er			54 20	A. Barrett			1 52
			50	D. P. Barrington			192 86
on			43 45	L. Billings			7 76
			154 15	Mary A. Black			2 28
evalier			326 30	C. Brelsford			202 94
l			98 20	Mary Brick			201 66
			24 30	Carrie Bryan			2 63
nberg			115 50	M. J. Bowie			1 80
			50 40	A. Boyce			18 71
lum			184 20	M. Boyle			21 11
hy			316 20	Mary E. Buete			124 31
ald			331 60	Belle Burgess			57 18
ll			111 00	Mollie E. Burrows			2 84

No. 21.—*Persons employed on the Congressional Record, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
A. Butler			$5 36	A. Hughes			$58 50
Winifred Cahill			32 47	Mary L. Hullings			1 52
Julia Callahan			2 21	S. Husted			26 93
F. Chase			42 05	H. Johnson			4 24
Belle Carter			23	M. A. Johnson			34 33
Elizabeth Casper			4 45	E. Jones			28 83
Ella F. Clements			132 95	V. A. Jones			139 67
M. M. Coberth			1 69	Katie A. Keefe			2 10
Alice V. Collins			2 25	T. Keefe			76 50
S. Collins			45 00	B. Kennelly			75 75
A. Columbus			2 25	S. E. Kerper			1 66
Rosie Connell			10 20	M. J. Kersey			1 35
M. Connelley			16 35	Julia King			20 06
J. Connor			233 75	M. Kirsch			1 28
F. W. Conover			196 75	Emma M. Kroger			1 29
Mattie Cook			9 84	Rosa La Covey			18 68
M. Courtney			2 70	Ellen Landvoigt			19 78
Janie Cox			2 25	Mary Larman			111 93
Annie E. Cross			18 27	A. V. Lee			14 70
Ada M. Cross			24	Fannie Littleton			178 36
L. M. Cross			186 94	C. Lusby			166 76
C. Daily			2 13	Florence Lusby			53 92
A. Daly			2 73	Mary E. Lynch			31 00
M. Darby			157 97	H. Macnamee			29 50
E. Davis			3 11	Hattie McCabe			1 44
Maggie B. Davis			21 70	M. M. McCarthy			14 70
M. Dawson			6 31	Mamie McClelland			17 44
S. Dickson			2 54	A. McDonald			154 76
E. A. Dickinson			21 69	Minnie F. McGowan			15 21
N. Diggs			57 83	E. V. McGowan			26 38
Ida Dinger			2 70	Belle J. McIntyre			16 69
E. Donnelly			1 56	A. C. McKelden			2 26
J. A. Downing			18 56	L. A. McKenney			2 71
B. Duffy			1 97	M. J. McLeod			2 86
O. Dwyer			14 28	Amelia McNulty			2 04
S. Edelen			21 11	A. R. Mallory			27 94
J. Elliott			3 50	Jennie E. Manning			1 44
I. R. Ellis			3 11	J. E. Mansfield			2 00
Minnie Elwood			1 61	M. A. Mapes			2 10
Mary Evans			4 64	M. E. Marceron			45 62
Annie P. Farley			6 31	E. Marche			160 76
Ellen Farrell			1 71	Lizzie Martin			90
Sallie Faulkner			1 35	Lula M. Mason			30 96
N. Felger			1 35	Sarah J. May			3 14
Nellie E. Fish			21 11	M. G. Meals			19 40
J. B. Forbes			31 15	Sallie Mills			24 17
S. Fordham			2 25	S. Moens			3 18
N. B. Franklin			13 68	M. Monday			8 32
Belle Gates			1 50	B. Mooney			1 65
M. Garttrell			6 32	Laura A. Moore			6 31
M. Gibbs			1 65	Maggie Morgan			1 20
J. F. Gilson			45	M. Morris			2 46
Elizabeth Gorman			35	Lizzie A. Morrow			13 85
E. Gould			1 80	M. M. Morrow			193 68
I. C. Greene			21 36	Josephine Murphy			1 64
Carrie Guggenheimer			15 12	M. E. Murray			21 11
Mary A. Hackett			44 52	Jenny Myerberg			90
M. Hall			21 76	Susie Myland			1 13
E. Handebean			136 87	L. M. Nash			28 63
Ella C. Hardy			3 11	M. B. Norbeck			28 34
Nettie Harlow			2 25	Margret O'Brien			6 09
Clara A. Harner			3 11	Maggie O'Connell			1 00
Delia Harper			2 66	M. T. O'Connor			21 11
E. J. Harper			3 50	Lena M. O'Leary			206 81
L. V. Harper			1 14	M. O'Leary			2 25
T. Harrison			21 00	Mary A. Orme			1 29
A. A. Hayes			21 11	J. T. Parham			130 13
M. E. Hayes			30	S. Partridge			21 11
L. Hays			3 12	Ella Patterson			171 57
J. Hellings			49 70	Odessa Pierce			1 53
A. Higgins			32 02	F. Pope			196 35
L. Hill			2 12	E. J. Proctor			19 81
M. V. Hoffman			21 11	Emma Pumphrey			6 32
Lucy Horton			1 27	K. Reapsomer			2 00
Ella House			22 71	Dora C. Riecks			1 80
C. Howard			57 17	Mary Riley			1 56
J. Howlin			94 69	Effa J. Ritchie			1 80

No. 21.—*Persons employed on the Congressional Record, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
s			$57 30	Lucy Fister			$0 92
r			3 16	Katie Flemming			1 38
ler			2 81	S. W. Folk			92
Schneider			43 94	Emma V. Ford			1 38
iner			69 75	A. C. Francis			1 38
erson			14 70	G. Gantt			92
			3 12	Minnie Georges			1 38
Smart			83 50	L. Gibney			92
ith			3 14	Frances Graves			1 38
C. Smith			3 12	Belle Halliday			92
se			37 00	Katie E. Harrington			1 38
. Sollers			177 45	Carrie F. Hartwell			92
nerville			56 50	Louisa Henry			92
per			3 12	Mary Honan			1 38
eisser			139 67	Ora E. Hubler			92
tetson			5 88	Annie A. Hurley			1 38
Stewart			14 00	Emma Jeffries			1 38
Stewart			7 77	Mary Joyce			1 38
an			14 70	A. B. Kleinheim			1 38
Szegedy			16 89	Amanda Klotz			92
E. Tennyson			12 22	Delia C. Lang			1 38
as			2 10	M. A. Lenihan			1 38
Thompson			167 27	Carrie Lewis			1 38
hompson			53 50	M. G. Lillie			92
ole			15 34	Ella F. Long			1 38
E. Toomey			2 66	Kate Lyons			1 38
Twomey			2 25	M. A. McGraw			1 38
rrell			40 00	E. McKenzie			1 38
alsh			59 80	M. V. Martin			1 38
h			160 77	Amelia Moreno			92
tson			57 30	Katie Morris			1 38
ter			230 85	L. T. Morris			92
			21 12	Mary A. Murry			1 68
Wetzel			2 73	Mary Nasser			92
. Wilke			41 86	Mary Nolan			1 38
n			8 02	Kate O'Gorman			1 38
Wilson			80 75	M. E. Owen			1 35
end			140 76	Millie Parker			92
s			6 25	Kate M. Price			1 38
			178 29	Sadie Pruette			1 38
iderson			92	M. Purcell			1 38
Ashburn			92	Julia Ready			1 38
l			92	Mary A. Readen			92
Blankman			1 38	Ella M. Ridgely			92
Brown			92	Clara J. Robinson			92
E. Burford			92	E. L. Rollins			1 38
r			92	Lucy V. Ruby			92
Cavanagh			92	Anna V. Shaw			92
amberlin			1 38	Mary J. Sinclair			1 38
Clayville			1 38	Kate G. Smith			1 38
Clokey			1 38	Mary A. Smith			1 38
clesser			92	C. Stanton			92
ins			1 38	K. Stevens			1 38
rcoran			92	Sue Stevens			1 38
			1 38	Maggie Sullivan			1 38
niels			92	Cheney Swain			1 38
by			92	Ella Torrey			1 38
naldson			1 38	L. F. Walker			92
wden			92	E. E. Wernwag			92
it			46	Martha Wilkins			92
m			1 38	L. E. Windsor			92
b			92	Julia A. Wolff			92
rrar			92	Josie Wright			92

No. 22.—*Statement showing the number of persons employed in printing Annual Report (1883) of Commissioner of Agriculture during the fiscal year ending June 30, 1885, with the length of time each has been employed and the amount each has received.*

Name.	Time employed. Days.	Time employed. Hours.	Amount received.
Richard Berry		22	$11 00
Geo. W. Folk		14	4 76
H. J. Houghton		5	1 57
G. L. Pearson		1 49	34 06
J. W. Dutton		2	60
Luther R. Frank		67	20 10
Henry C. Watson		7	2 10
John Weckerly		67	20 10
U. S. G. Jarvis		15	3 75
D. P. Lynch		98	24 50
John Murphy		12	3 00
E. W. Williams		29	7 25
James O. Amos		33	13 20
R. T. Anderson		17	6 80
G. O. Barnes		79	31 60
J. W. Beall		1 40	56 00
Jno. L. Bentzler		37	14 80
Geo. W. Bilyew		20	8 00
Dennis Buckley		34	13 60
A. J. Buehler		54	21 60
Geo. D. Burch		10	4 00
F. H. Chaffee		72	28 80
W. F. Clarkson		58	23 20
Jas. D. Conner		75	30 00
Frank L. Cornwell		24	9 60
L. W. Denham		40	16 00
Horace C. Dowling		8	3 20
George W. Engel		44	17 60
H. C. Fish		70	28 00
George Finch		46	18 40
Charles Fowler		43	17 20
Robert T. Frailey		46	18 40
William Gilliard		18	7 20
Joseph F. Glenn		28	11 20
W. L. Griggs		32	12 80
Edward Grimes		45	18 00
J. William Haslett		28	11 20
John C. Helliff		148	59 20
William L. Hettinger		102	40 80
Henry T. Houck		36	14 40
William H. Kelly		31	12 40
John E. Knight		44	17 60
C. M. Knott		27	10 80
Gustave Lancer		46	18 40
E. McCarter		99	39 60
J. H. McCormick		53	21 20
J. F. McDonald		32	12 80
William McLanahan		40	16 00
Charles A. McNamee		126	50 40
John Masterson		30	12 00
Thomas Menshaw		19	7 60
Charles F. Miller		19	7 60
R. W. Moore		30	12 00
William S. Moore		23	9 20
J. C. Motherhed		85	34 00
D. A. Murphy		153	61 20
C. K. Nalley		37	14 80
E. Nash		101	40 40
William M. Nicholson		149	59 60
George A. O'Donnell		25	10 00
John O'Reilly		46	18 40
T. F. Pendel		22	8 80
Joseph Portch		27	10 80
J. W. Pyemont		94	37 60
James Read		155	62 00
Bernard J. Smith		41	16 40
Thomas F. Stewart		34	13 60
James A. Stockman		29	11 60
S. E. Stratton		36	14 40
Peter Swift		27	10 80
David A. Thompson		43	17 20
Dennis Toomey		60	24 00
John Walde		16	6 40
Fred Wagner		8	3 20
George K. White		75	30 00
George M. White		5	$2 00
H. Wiese		32	12 80
Robert H. Zimmerman		40	16 00
M. L. Andrews		37	8 51
Mamie E. Barry		83	19 09
Mary Barry		128	29 44
B. M. Bartlett		103	23 69
Kate Bennett		92	21 16
M. J. Burkholder		25	5 75
R. Bushee		118	27 14
M. E. Calvo		134	30 36
Virginnia Cammack		120	27 60
Kate Cantine		24	5 52
Indiana Cowling		32	7 36
Maggie Devlin		128	29 44
A. Dickinson		99	22 77
Ella M. Ferguson		76	17 48
Jennie H. Fitch		69	15 87
Jennie Goss		32	7 36
Annie E. Gross		17	3 91
Mary C. Hines		24	5 52
E. J. Hooper		32	7 36
Jennie A. Jenkins		32	7 36
Ella A. Johnston		32	7 36
Innocentia McGill		32	7 36
Jennie McPherson		24	5 52
Emma Miller		85	19 55
Gertrude Moore		133	30 59
Katie A. Murphy		126	28 98
Minnie Osborne		110	25 30
Lydia J. Pixley		24	5 52
Beatrice Prather		32	7 36
I. M. Rutherford		76	17 46
Mary Sullivan		8	1 84
Bessie B. Throckmorton		48	11 04
R. M. Campbell		80	25 00
James Cavanaugh		64	16 00
PIECEWORK.			
A. S. Adams			4 29
F. Baker			1 14
E. E. Banks			1 91
D. C. Brooke			4 79
L. C. Brown			4 29
Carrie Bryan			1 15
Belle Burgess			21 29
M. A. Burgess			4 29
J. A. Burr			3 15
Mollie E. Burrows			1 14
A. Butler			1 14
Sarah C. Butler			2 80
Emma L. Carrico			6 25
Elizabeth Casper			1 14
E. Clagett			3 79
M. Clarkson			3 15
S. Collins			5 25
A. Columbus			2 28
F. W. Conover			5 00
M. Corbin			4 29
Ann Cowan			2 25
Georgie E. Crawford			4 29
M. A. Crooker			4 29
Lucy R. Crupper			1 47
K. Cunningham			25
E. Davis			90
M. Dawson			4 06
N. Diggs			23 58
Lizzie Downie			50
I. R. Ellis			1 15
Mary E. Ellsworth			4 29
Laura V. Etter			4 29
Mary Evans			1 14
Annie P. Farley			4 29
Sallie Faulkner			2 28

No. 22.—*Persons employed on the Agricultural Report* (1883), *&c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
lynn			$2 04	S. D. Soper			$1 14
ttrell			3 93	Mary M. Sprandel			4 29
. Glasgow			3 15	M. A. Thompson			22 19
Hardy			1 15	Mary L. Town			2 25
M. Hargrove			4 29	E. V. Walker			2 92
Harper			1 14	Katie Walsh			5 32
Haskell			1 63	Mary E. Wilson			5 02
enner			4 29	F. M. Withers			7 00
S. Head			4 29	May Barnett			8 40
ings			24 04	Eugenie Blankman			15 75
gins			31 45	Minnie E. Burford			3 85
rard			16 73	Ada Burr			6 65
L. Hullings			1 14	Julia F. Clokey			6 65
ted			29 31	Nannie Daniel			15 75
ohnson			4 50	Ellen Donaldson			16 10
es			27 82	Kate Dowden			4 20
Keys			4 29	C. Durham			3 85
King			22 49	M. M. Farra			16 10
Bille			4 00	A. C. Francis			4 20
d			4 29	G. Gantt			3 85
Carthy			89	Nettie A. Groshon			6 30
McGraw			12 91	Katie E. Harrington			3 85
McLeod			1 15	Carrie F. Hartwell			6 30
Mallory			31 22	S. G. Hayden			3 85
Mansfield			24 50	Annie A. Hurley			3 85
rtin			4 00	Delia C. Lang			3 85
tin			1 15	M. A. Leinhan			16 10
I. Mason			22 38	Carrie E. Lewis			6 30
J. May			25	Rosa Lydick			6 64
ns			1 14	M. A. McGraw			15 75
A. Moore			4 29	Julia T. Miller			6 65
Nash			29 29	Katie Morris			3 85
A. Orme			1 14	L. T. Morris			6 65
atterson			3 02	Millie Parker			9 45
Pemberton			4 29	Lou M. Pemberton			3 85
E. J. Porter			3 79	Kattie R. Powell			6 65
roctor			29 29	Sadie Pruett			3 15
apsomer			4 25	M. Purcell			16 10
d			4 29	E. L. Rollins			16 10
ers			22 60	Anna V. Shaw			16 10
ier			1 14	Mary A. Smith			3 85
Ross			4 29	Sarah Sorrell			16 10
Sayers			4 29	Maggie Sullivan			4 20
ey			1 14	Cheney Swain			16 10
sibley			1 25	Ella Torrey			8 75
mith			1 14	Julia A. Wolff			22 75
e K. Smith			1 08				

.—*Statement showing the number of persons employed in printing Annual Report* -4) *of Commissioner of Agriculture during the fiscal year ending June* 30, 1885, *with length of time each has been employed and the amount each has received.*

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
. Deloe		13	$96 89	Richard P. Thomas		8	$3 20
ler		70	37 10	Ellen Barnes		108	20 25
W. Otis		127	67 31	N. Blair		4	75
Hammer		25	10 00	Edella Burdette		36	6 75
McCrea		28	11 20	Rose Corrothers		4	75
W. Shotwell		99	39 60	Louise Corstens		12	2 25
rown		572	228 80	Amelia E. Cromelien		644	120 75
ah Donavan		12	4 80	William R. Curtin		48	12 00
d Duff		28	11 20	E. J. DeLorme		87	16 31
ns		274	109 60	Nellie Donoghue		4	75
Farrington		1,365	546 00	Maggie Duffy		332	622 25
bus Hall		4	1 60	Annie Gaughran		336	63 00
Preall		1,457	582 80	A. D. Goss		168	31 50
Robinson		108	43 20	Ada M Greenwood		518	97 12
. Riley		102	40 80	Florence Harman		35	

No. 23.—*Persons employed on the Agricultural Report* (1884

Name.	Time employed.		Amount received.	Name.
	Days.	Hours.		
Jennie Jackson	------	16	$3 00	Jno. Murphy
Mary Jackson	------	559	105 81	Noel Nichols
Annie E. Long	------	16	3 00	F. C. Oberholtz
Bettie Long	------	20	3 75	B. F. Oder
Ella McGraw	------	12	2 25	Jno. X. Phillips
Maggie McKie	------	28	5 25	Simon Pocher
Mary Mills	------	258	48 37	R. E. Scott
Cecelia Moore	------	4	75	William Shepherd
M. J. Nicholson	------	212	39 75	R. L. Todd
Mary O'Brien	------	20	3 75	John H. Van Lew
Mary E. Ragan	------	288	54 00	Howard C. Wall
Daniel C. Ray	------	512	128 00	Daniel Wathen
CatherineSchermerhorn	------	8	1 50	Charles H. Worden
Ella Steele	------	20	3 75	James O. Amoss
Emma Swain	------	4	75	R. T. Anderson
Ida Van Arsdale	------	108	20 25	James K. Baily
Jno. A. Bryan	------	14	3 50	G.O. Barnes
G. Coakley	------	46	11 50	J. W. Beall
William R. Curtin	------	56	14 00	Jno. L. Bentzler
Frank Dial	------	224	56 00	George W. Bilyew
C. C. Haddock	------	276	69 00	J. J. Brunon
Washington Leftrich	------	152	38 00	A. J. Buehler
Daniel C. Ray	------	48	12 00	Geo. D. Burch
Wm. E. Saunders	------	1,429	357 25	William R. Caffrey
Wm. S. Seymour	------	1,234	308 75	Jos. E. Casey
J. E. Smith	------	1,432	358 00	F. H. Chaffee
James E. Young	------	10	2 50	William Chedal
W. A. Brown	------	300	132 00	W. F. Clarkson
Frank Coburn	------	325	143 00	Joseph Colignon
Geo. Recar	------	325	143 00	C. C. Colué
T. W. Shomo	------	135	59 40	James D. Conner
Richard Berry	------	364	182 00	Frank L. Cornwell
J. Paul Chambers	------	482	350 64	Arthur C. Delevingne
M. A. DuBois	------	184	73 60	W. P. Dowden
Wm. C. Heck	------	884	353 60	Horace C. Dowling
John W. Maxwell	------	200	80 00	Jos. E. Duvall
Will P. Reese	------	12	4 80	H. C. Eckart
D. W. March	------	26	9 75	C. Thomas Elwood
Geo. W. Folck	------	25	8 50	George W. Engel
A. J. Houghton	------	231	72 19	W. G. Evans
James A. Hewes	------	199	51 25	George Finch
H. C. Moran	------	315	98 42	F. Fischer
Charles J. Ortlip	------	39	12 18	H. C. Fish
Hod Reynolds	------	356	111 25	Chas. Fowler
M. D. Anderson	------	612	173 90	J. W. Fox
Chas. F. Burch	------	250	75 00	Robert T. Frailey
S. K. Coster	------	7	2 10	John M. Gantley
J. W. Dutton	------	182	54 60	Wm. Gilliard
Luther R. Frank	------	306	91 80	P. C. Gillon
Harry A. Gwin	------	104	31 20	Joseph F. Glenn
James F. Lacey	------	8	2 40	W. L. Griggs
D. McCathran	------	10	3 00	Harry H. Haff
D. A. Neal	------	459	137 70	Joseph A. Handley
Edward H. Parlin	------	80	24 26	Michael Harris
C. A. Rice	------	63	18 90	J. William Haslett
W. E. W. Rowe	------	20	6 00	John C. Helff
Rush C. Steele	------	275	81 20	Wm. L. Hettinger
J. L. Venable	------	96	28 80	Henry T. Houck
Harry C. Watson	------	111	33 30	Theo. K. Hynicka
John Weckerly	------	370	111 00	Thomas Keegan
Alpha B. Beall	------	177	44 25	Wm. H. Kelly
James R. Bell	------	320	80 00	T. J. Kelly
William H. Berry	------	40	10 00	John F. King
C. N. Buckland	------	4	1 00	Jno. E. Knight
W. H. Burger	------	213	53 25	C. M. Knott
W. S. Clarke	------	532	133 00	Augustus Kuhner
W. B. Collier	------	6	1 50	Gustave Lancer
Frank F. De Lea	------	326	81 50	Jno. A. Landvoigt
James Doyle	------	16	4 00	John I. Leitch
Robert Fearson	------	498	124 50	E. McCarter
Jos. Isaacs	------	6	1 50	J. H. McCormick
John Johnson	------	71	17 75	J. F. McDonald
Owen Keefe	------	275	68 75	Wm. McLanahan
Thomas J. Kenny	------	408	102 00	James McManus
D. P. Lynch	------	81	20 25	Chas. A. McNamee
Argyle Mackey	------	138	34 50	Wm. Marshall
C. S. Mills	------	728	182 00	J. Meehan

23.—*Persons employed on the Agricultural Report* (1884), *&c.*—Continued.

ame.	Time employed. Days.	Time employed. Hours.	Amount received.	Name.	Time employed. Days.	Time employed. Hours.	Amount received.
lelville		16	$6 40	I. M. Rutherford		518	$119 14
iller		66	26 40	K. Stevens		490	112 70
re		7	2 80	B. B. Throckmorton		91	20 93
ore		56	22 40	F. Williams		164	37 72
erhed		575	230 00	W. T. Kelly		282	98 70
n		107	42 80	James Cavanaugh		554	173 12
phy		55	22 00	F. A. West		182	54 60
ey		250	100 00	S. D. Skeen		52	15 60
O'Donnell		234	93 60	R. B Billings		20	5 60
Orem		131	52 40	Michael Carroll		64	16 00
rem		116	46 40	A. D. Coleman		269	67 25
el		338	135 20	George Coleman		14	3 50
Seissner		4	1 60	H. Hall		4	1 00
illps		373	149 20	W. E. Johnston		4	1 00
itt		552	220 80	H. H. Lazelle		60	15 00
owsky		56	22 40	Burr Lucas		26	6 50
rtch		632	252 80	C. McDevitt		67	16 75
Price		56	22 40	Jacob Robinson		4	1 00
geon		19	7 60	Frank Rowe		24	6 00
nont		60	24 00	Augustus Schwartz		20	5 00
oberts		184	73 60	C. C. Stewart		64	16 00
Ryan		252	100 80				
le		57	22 80	PIECEWORK.			
bert		4	1 60				
. Smith		453	181 20	S. McL. Byington			113 10
nith		52	20 80	W. J. Caldwell			94 00
ckman		45	18 00	G. F. Hammer			317 05
ton		64	25 60	W. C. Henry			151 35
ft		232	92 80	Geo. Johnson, jr			150 95
'aff		24	9 60	Wm. R. LeChevalier			98 55
Thompson		286	114 40	Daniel McCallum			130 65
cher		79	31 60	M. M. Mitchell			118 65
omey		388	155 20	A. S. Adams			174 12
an Horn		60	24 00	M. B. Adamson			107 85
le		159	63 60	Ella Ahern			90 77
igner		92	36 80	M. Ambrose			90 76
de		192	76 80	L. L. Andrews			90 86
ng		4	1 60	M. Anthony			121 93
'. Walker		36	14 40	J. Bahlman			128 95
'alsh		325	130 00	Bettie Baker			116 54
White		605	242 00	F. Baker			116 18
		172	68 80	Isabella Ball			137 52
Zimmerman		65	26 00	E. P. Balmain			97 81
lrews		405	93 15	Mary Baptista			105 91
ette		510	117 30	A. Barrett			167 75
Barry		512	117 76	D. P. Barrington			23 27
y		469	107 87	J. Barry			186 22
lett		531	122 13	Mary A. Black			113 18
ett		555	127 65	M. J. Bowie			135 08
Burford		674	155 02	A. Boyce			73 77
		616	141 68	S. C. Brawner			138 90
		597	137 31	C. Brelsford			26 40
o		623	143 29	Mary Brick			29 73
ine		604	138 92	D. C. Brooke			178 66
s		596	137 08	L. C. Brown			178 22
aldson		609	140 07	Mary Brown			30
rguson		60	13 80	Mary G. Brown			4 15
Fitch		92	21 16	Carrie Bryan			129 88
'itz Patrick		60	13 80	Bessie Bryan			106 78
ss		68	15 64	Belle Burgess			49 69
Gross		594	136 62	M. A. Burgess			183 77
den		352	80 96	Mary E. Buete			6 18
yden		386	88 78	J. A. Burr			178 05
er		100	23 00	Mollie E. Burrows			110 43
Jenkins		75	17 25	J. E. Burton			87 92
hnston		90	20 70	O. K. Burwell			135 47
ck		609	140 07	A. Butler			136 01
McGill		80	18 40	Winifred Cahill			80 02
'Pherson		591	135 93	Julia Callahan			126 39
Maudley		64	14 72	Emma L. Carrico			98 25
ller		628	144 44	Belle Carter			60 53
Moore		603	138 69	Jennie Carter			84 45
timer		440	101 20	Elizabeth Casper			136 36
Murphy		471	108 33	F. Chase			107 40
borne		581	133 63	Addie Chinn			94 29
'ixley		600	138 00	B. L. Chritzman			24 00
Prather		656	150 88	E. Clagett			157 94

No. 23.—*Persons employed on the Agricultural Report* (1884), *&c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
M. Clarkson			$166 56	Ella C. Hardy			$137 1
Ella F. Clements			73 31	Betty M. Hargrove			172 2
M. M. Coberth			111 99	Gertrude Harleston			129 9
A. Collins			52 98	Nettie Harlow			131 4
Maggie J. Collins			1 35	Delia Harper			135 5
S. Collins			59 50	L. V. Harper			91 9
A. Columbus			129 00	M. A. Harper			126 9
Rosie Connell			85 50	Clara A. Harner			136 5
M. Connelley			109 19	F. V. Harris			46 5
J. Connor			29 74	T. Harrison			71 7
F. W. Conover			47 75	E. Havenner			161 1
Mattie Cook			67 16	F. A. Haskell			176 4
M. Corbin			175 95	M. E. Hayes			113 7
M. Courtney			133 80	L. Hays			133 1
Ann Cowan			177 22	Ella C. Hayward			116 4
Janie Cox			132 59	Mary E. Head			177 7
Georgie E. Crawford			177 58	E. Heffell			110 7
Nellie Cronin			96 98	Georgie Heinline			95 3
L. M. Cross			10 14	J. Hellings			26 3
Maggie Culbertson			72	V. Henrick			149 0
K. Cunningham			123 93	Katie Hensan			138 6
C. Daily			143 57	S. Hess			67 7
H. Daily			176 63	Edith A. Hicks			116 4
A. Daly			115 65	A. Higgins			39 0
E. Davis			126 49	L. Hill			146 5
Maggie B. Davis			75 87	A. Hodge			114 3
M. Dawson			178 22	M. E. Hoover			75 4
E. A. Dickinson			75 62	Ella House			67 1
S. Dickson			129 41	C. Howard			49 4
N. Diggs			44 83	Mary Hubbel			178 3
Ida Dinger			121 95	A. Hughes			5 0
Maggie L. Dodd			88 13	Mary L. Hulings			127 0
I. E. Doherty			131 67	S. Husted			30 5
Lillie J. Donn			132 35	A. Hutson			134 0
E. Donnelly			105 61	Sarah E. Jackson			1 0
M. Donnelly			95 78	B. F. Jeffries			89 9
Katie Donohue			75 94	H. V. Jeffries			102 5
J. A. Dougherty			47 02	H. Johnson			117 7
J. A. Downing			90 26	M. A. Johnson			76 0
J. L. Dowling			139 99	L. H. Johnson			154 5
Lizzie Dowlie			175 86	E Jones			36 3
B. Duffy			138 11	M. W. Jones			57 2
Kate Dunne			135 22	Jennie Kauffman			130 3
A. Dutrow			103 68	Katie A. Keefe			106 3
O Dwyer			91 55	T. Keefe			39 7
Sarah Edmonds			103 35	Ella Kelly			79 4
J. Elliott			136 25	Mary E. Kelley			137 6
I. R. Ellis			136 92	P. Kennelly			39 5
Mary E Ellsworth			168 01	S. E Kerper			102 8
Laura V. Etter			176 88	Maria Keys			183 8
Mary Evans			136 81	M. Kirsch			114 3
V. M. Evans			109 86	Emma M. Kroger			113 8
Annie P. Farley			140 18	M. La Bille			177 5
Ellen Farrell			135 28	E. Lackey			78 1
Sallie Faulkner			131 94	Rosa La Covey			69 2
N. Felger			134 5	Ellen Landvoigt			71 4
Minnie Fitzgerald			133 67	E. Laporte			87 7
M. Fleming			175 50	Mary Larman			68 1
H. C. Flynn			103 81	A. V. Lee			141 4
J. B. Forbes			80 81	Etta Leonard			7
S. Fordham			131 09	Fannie Littleton			9 3
C. Fowler			134 27	D. Lord			177 8
N. B. Franklin			78 92	Florence Lusby			64 1
M. Gartrell			173 28	Mary E. Lynch			116 3
Belle Gates			143 00	H. Macnamee			113 2
Bell Gheen			137 28	Hattie McCabe			116 5
M. Gibbs			110 24	Nettie L. McCampbell			133 7
Louise Gibson			126 51	Annie S. McCarter			135 4
Queenie Gilson			58 05	A. McCarthy			68 4
Ellie C. Glasgow			173 10	M. M. McCarthy			103 7
E. Glendenning			54	Mammie McClelland			8 2
Elizabeth Gorman			138 19	F. M. McCristal			140 7
E. Gould			99 98	Mary McGinnell			91 8
I. C. Greene			73 11	Minnie F. McGowan			120 0
A. I. Griffith			101 08	E. V. McGraw			23 9
M. Hall			71 48	Belle J. McIntyre			77 0
Mary M. Hammond			159 73	A. C. McKelden			120 5

.—*Persons employed on the Agricultural Report* (1884), *&c.*—Continued.

	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
ney			$129 96	Sue Saunders			$2 30
l			134 08	Julia M. Savage			90 16
a			150 57	M. A. Sayres			112 35
'amara			152 55	Rose E. Schneider			76 53
ilty			134 96	L. Selvey			142 68
			34 13	J. E. Sergerson			99 71
ning			126 43	N. Sheiry			137 56
d			5 00	L. Shepherd			74 78
			115 84	W. H. Shomo			175 28
on			59 73	J. Sibley			76 53
			154 01	M. A. Sibley			102 47
			134 90	Mary Sierenberg			89 81
			29 27	M. J. Smith			135 89
			130 26	Maggie K. Smith			133 27
n			34 53	Kate V. Smoot			119 53
			128 39	Mattie G. Sollers			11 32
			53 72	R. Somerville			90
			36 46	S. D. Soper			136 60
a			56 00	M. T. Spalding			99 20
			121 49	Mary M. Sprandel			168 02
			134 19	Dora Steele			3 67
un			81 54	Laura B. Stewart			131 47
			30 56	Lucy W. Stone			130 13
			113 78	Katie Strong			3 07
re			163 12	A. Sullivan			87 79
an			109 61	M. Sullivan			189 68
			114 80	Josie M. Summers			102 67
row			60 53	Frances Szegedy			104 65
v			15 43	A. O. Talbot			139 30
phy			142 48	Georgie E. Tennyson			4 15
rphy			122 19	E. Thomas			110 95
erg			91 03	Augustus Thompson			61 22
			121 67	M. A. Thompson			39 78
			37 22	Rhoda M. Thorn			96 73
			132 35	D. C. Toole			140 98
			110 64	Maggie E. Toomey			111 76
a			101 55	Mary E Twomey			136 71
nell			84 78	Lottie P. Tyson			100 21
ary			7 90	E. V. Walker			155 29
			133 00	Ida Walker			167 00
a			122 27	L. D. Walker			132 31
			163 00	Katie Walsh			34 46
			137 96	Mary E. Walsh			139 74
gburn			2 38	M. Ward			11 82
			23 85	Nannie Wathen			138 36
a			12 01	Annie Waters			140 04
ton			178 40	J. E. Watson			24 25
s			107 87	H. Webster			57 16
			99 21	Sophia L. Wells			95 76
			114 67	P. White			121 51
			36 59	Emma L. Wilke			73 46
			80 06	E. J. Williams			139 08
			138 66	Fannie Wilson			98 63
			13 27	J. Wilson			64 50
			13 07	Margrett Wilson			21 95
			7 28	Mary E. Wilson			164 84
rter			132 38	F. M. Withers			160 50
			3 78	Mamie Wood			91 88
rey			175 66	Fannie Woodward			138 04
			37 75	Emma Woolsey			167 81
			98 52	E. Young			92 98
			141 65	Mary Anderson			5 25
			157 25	Mary E. Bailey			13 65
			161 57	Kate Ball			14 70
			106 42	Elizabeth A. Ball			14 70
			87 58	Mary E. Brown			11 55
an			74 75	Ada Burr			14 35
d			121 81	Annie M. Cavanagh			15 05
s			107 92	Mary Chamberlin			12 25
			72 37	Julia F. Clokey			15 05
son			83 99	A. A. Colclesser			14 70
llow			151 50	Sara Collins			14 70
			48 22	Alice Corcoran			14 70
			135 90	E. A. Cox			13 65
			176 55	F. F. Cruppen			15 05
			118 85	Isabella Cunningham			14 70
			79 22	Mary Daniels			14 70

No. 23.—*Persons employed on the Agricultural Report* (1884), *&c.*—Continued.

Name.	Time employed. Days.	Time employed. Hours.	Amount received.	Name.	Time employed. Days.	Time employed. Hours.	Amount received.
Nannie Daniels			$12 95	Carrie B. McKnight			$4 90
M. E. Dow			14 35	Sallie H. Macnichol			15 05
Kate Dowden			14 70	M. V. Martin			14 70
Maud Dubant			14 35	Julia T. Miller			70
C. Durham			14 70	Amelia Moreno			14 70
Ronie Elms			15 05	L. T. Morris			14 70
Anna Erb			14 00	Mary Mullen			13 30
Katie Flemming			14 35	Mary A. Murray			14 70
S. W. Folk			14 35	Mary Nolan			14 70
Kate Fox			15 05	Kate O'Gorman			14 70
A. C. Francis			15 05	M. E. Owen			12 25
Emma B. Furlong			3 15	Millie Parker			13 65
G. Gantt			14 70	L. M. Pemberton			15 05
Minnie Georges			14 70	Kate M. Price			15 05
L. Gibney			14 70	Sadie Pruette			14 70
Francis Graves			5 25	M. Purcell			15 05
Nettie A. Groshon			13 30	Clara J. Robinson			14 35
Belle Halliday			14 70	Lucy V. Ruby			14 70
Julia Hanlan			14 70	E. L. Rollins			14 00
Katie Harrington			14 70	Anna V. Shaw			15 05
Carrie F. Hartwell			14 35	H. Sherwood			9 10
Louisa Henry			15 05	Margret Shields			15 05
Mary E. Hill			14 70	Mary J. Sinclair			14 70
W. J. Hodson			10 50	Mary Snow			14 00
Mary Honan			15 05	Ella M. Springer			14 70
Ora E. Hubbler			14 35	M. J. Stanley			15 05
Annie A. Hurley			14 00	C. Stanton			15 05
Emma Jeffries			14 70	Cheney Swain			15 05
Annie E. Johnston			14 70	L. F. Walker			11 90
Mary Joyce			15 05	E. E. Wernwag			11 55
A. B. Kleinheim			15 40	Martha Wilkins			12 95
Carrie E. Lewis			14 70	Margaret Williams			14 70
Ella F. Long			14 35	L. E. Windsor			14 00
Marion McGivern			14 70	Julia A. Wolff			14 70
E. McKinzie			14 35	Josie Wright			12 25

No. 24.—*Statement showing the number of persons employed in the publication of the Tenth Census Reports during the fiscal year ending June* 30, 1884, *with the length of time each has been employed and the amount each has received.*

Name.	Time employed. Days.	Time employed. Hours.	Amount received.	Name.	Time employed. Days.	Time employed. Hours.	Amount received.
John F. Connolly		20	$10 60	W. H. Duling		1,558	$622 2[illegible]
W. W. Deloe		99	52 47	H. Clay Evans		708	283 2[illegible]
Benjamin Drew		2	1 06	Aloy. S. Fennell		241	96 4[illegible]
H. All. Foresman		563	298 39	William Floyd		72	28 8[illegible]
H. A. Nothnagel		19	10 07	Benj. Franklin		78	31 2[illegible]
Chas. W. Otis		295	156 35	W. B. Greene		19	7 6[illegible]
E. M. Wheat		377	199 81	James Greenwood		348	139 2[illegible]
O. F. Dunlap		170	68 00	J. F. Griffin		73	29 2[illegible]
W. J. Fowler		184	73 60	E. J. Handly		526	210 4[illegible]
W. H. Sealey		59	23 60	C. T. Harding		1	4[illegible]
John W. Shotwell		293	117 20	W. C. Henry		27	10 8[illegible]
B. M. Winters		15	6 00	Do		1	4[illegible]
C. F. Gilmore		143	71 50	S. H. Herman		65	26 0[illegible]
J. M. Craig		171	85 50	J. J. Heron		338	135 2[illegible]
Charles Wright		65	32 50	Augustus R. Holden		89	35 6[illegible]
J. S. Burnside		6	2 70	George W. Howard		321	128 4[illegible]
C. J. Alexander		14	5 60	T. W Howard		897	358 8[illegible]
M. Barringer		1	40	Albert E. Ingalls		395	158 0[illegible]
Wallace Brewer		216	86 40	C. T. Johnson		87	34 8[illegible]
W. S. Brooks		122	48 80	J. H. Kahlert		1,298	519 2[illegible]
C. P. Brown		69	27 60	R. W. Kerr, jr.		2	8[illegible]
J. F Chipley		1	40	F. C. Kemon		452	180 8[illegible]
Geo. W. Cox		184	73 60	M. H. Kendig		98	39 2[illegible]
E. C. Crump		3	1 20	R. E. Logan		1	4[illegible]
Joseph Dierken		77	30 80	U. S. Lowdermilk		809	323 6[illegible]
T. M. Donn		13	5 20	Charles Lustig		1	4[illegible]

.—*Persons employed in the publication of the Tenth Census Reports, &c.*—Continued.

Name.	Time employed.		Amount received.
	Days.	Hours.	
cArdle		1	$0 40
McCallum		1	40
lfresh		866	346 40
H. McFadden		123	49 20
lelly		72	28 80
P. Major		179	71 60
V. Metzgar		192	76 80
atterson		91	36 40
ierce		3	1 20
rather, jr		409	163 60
Reed		603	241 20
iddle		370	148 00
us Roberts		945	378 00
E. Ross		726	290 40
argent		1	40
F. Scaggs		87	34 80
C. Sefton		42	16 80
homo		27	10 80
S. Stevens		59	23 60
rwalt, jr		498	199 20
mmons		483	193 20
Sweeney		803	321 20
aylor		741	296 40
homson		242	96 80
homas		96	38 40
alton		2	80
alton		195	78 00
Webb		153	61 20
eber		834	333 60
. White		98	39 20
right		754	301 60
ung		92	36 80
rving		6	1 50
Jackson		2	50
el Thomas		6	1 50
aller		90	22 50
Vilson		2	50
. Clarkson		990	396 00
Cole		373	149 20
l Duff		422	168 80
ns		4	1 60
Nitnam		176	70 40
urbershaw		1,115	446 00
us Hall		87	34 80
s H. Owings		177	70 80
Baylie		943	176 80
ine Carlisle		718	134 62
hauey		921	172 68
th Davis		516	96 75
Donoghue		148	27 75
. Fon Narbutt		88	16 50
Fuller		142	26 62
M. Garvey		136	25 50
Gaughran		226	42 37
Godey		661	123 94
Greenwood		227	42 56
Jackson		244	45 75
Keenan		140	26 25
th Litsinger		1,011	189 54
Long		24	4 50
cGraw		4	75
McKie		4	75
McNamara		1,189	222 94
files		16	3 00
Mitchell		717	134 47
Brien		1,075	201 55
Proctor		136	25 50
. Ragan		271	50 81
ne Schermer-			
		183	34 31
Varner		8	1 50
Wheeler		304	57 00
Carr		145	54 37
ray		18	5 04
. Bryan		20	5 00
ice		1,098	274 50
laddock		24	6 00

Name.	Time employed.		Amount received.
	Days.	Hours.	
William T. Hall		56	$14 00
Robert C. Langley		4	1 00
C. H. Robinson		616	154 00
Thomas Shelton		64	16 00
Moses Smith		184	46 00
J. B. Stoops		456	114 00
Perry Brown		800	132 00
W. A. Brown		200	88 00
Frank Coburn		200	88 00
H. C. Cowell		566	249 04
W. B. Kelly		566	249 04
Paul Livingston		300	132 00
John E. Parker		250	110 00
George Recar		228	100 32
S. L. Rowzee		300	132 00
T. W. Shomo		52	22 88
Richard Berry		182	91 00
J. Paul Chambers		273	141 96
Will P. Reese		6	2 40
George W. Flock		28	9 52
A. J. Houghton		424	132 48
H. C. Moran		53	16 56
G. L. Pearson		134	41 87
Charles J. Ortlip		19	5 93
James A. Hewes		260	66 25
Hod Reynolds		119	37 18
W. E. W. Rowe		73	22 05
M. D. Andrews		29	7 45
Chas. F. Burch		289	86 70
Harry A. Gewin		*59	17 70
James F. Lacey		49	14 70
D. McCathran		32	9 60
D. A. Neal		62	18 60
C. A. Rice		868	258 90
Rush C. Steele		111	32 35
J. L. Venable		100	30 00
Alpha B. Beall		3	75
James R. Bell		147	36 75
Wm. H. Berry		46	11 50
W. H. Burger		8	2 00
W. S. Clarke		321	80 25
P. J. Crenshaw		12	3 00
Frank F. De Lea		84	21 00
Jas. Doyle		3	75
Robert Fearson		104	26 00
U. S. G. Jarvis		4	1 00
John Johnson		331	82 75
J. C. Johnson		11	2 75
Owen Keefe		90	22 50
Thos. J. Kenney		8	2 00
John Lee		352	88 00
D. P. Lynch		146	26 50
John Murphy		111	37 75
Noel Nichols		38	6 50
F. C. Oberholtz		8	2 00
John X. Phillips		283	70 75
Simon Pocher		481	120 25
R. E. Scott		485	121 25
William Shepherd		92	23 00
R. L. Todd		76	21 15
James M. Toy		18	4 50
Howard C. Wall		92	23 00
Charles H. Worden		2	50
James O. Amoss		257	102 00
R. T. Anderson		166	42 40
G. O. Barnes		52	20 80
J. W. Beall		433	173 20
John L. Bentzler		319	127 60
George W. Bigyew		406	162 40
George H. Bodensiek		64	25 60
Adam Brandt		244	97 60
J. J. Bunnor		153	61 20
Dennis Buckley		35	14 00
A. J. Buehler		48	19 20
William R. Caffrey		254	101 60
F. H. Chaffee		1,380	552 00
William Cinedal		281	112 40

No. 24.—*Persons employed in the publication of the Tenth Census Reports, &c.*—Continued.

Name.	Time employed.		Amount received.
	Days.	Hours.	
W. F. Clarkson		195	$78 00
Joseph Colignon		141	56 40
James D. Conner		259	103 60
Frank L. Connell		125	50 00
Arthur C. Delevingne		358	143 20
L. W. Denham		37	14 80
W. P. Dowden		134	53 60
Horace C. Dowling		170	68 00
James E. Duvall		159	63 60
H. T. Eckart		60	24 00
George W. Engel		289	115 60
D. F. Fallon		46	18 40
George Finch		150	60 00
H. C. Fish		261	104 40
Charles Fowler		151	60 40
J. W. Fox		24	9 60
Robert T. Frailey		8	3 20
Jos. E. Gally		8	3 20
William Gilliard		323	129 20
Joseph F. Glenn		189	75 60
W. L. Griggs		44	17 60
Edward Grimes		199	79 60
Harry H. Haff		208	83 20
Michael Harris		160	64 00
J. W. Harrison		40	16 00
Augustus Hartman		129	51 60
J. William Haslett		17	6 80
John C. Helf		229	91 60
William L. Hettinger		148	59 20
Henry T. Houck		197	158 80
Theo. K. Hynicka		271	108 40
Augs. Jacobs		24	9 60
Andrew Jaeger		40	16 00
Thomas Keegan		221	88 40
William H. Kelly		208	83 20
George W. Kensil		213	85 20
John F. King		187	74 80
John E. Knight		171	68 40
C. M. Knott		150	60 00
H. R. Koon		48	19 20
Gustave Lancer		637	254 80
John I. Leitch		16	6 40
E. McCarter		303	121 20
J. H. McCormack		198	79 20
J. F. McDonald		225	90 00
William McLanahan		199	79 60
James McNames		8	3 20
Charles A. McNamee		267	106 80
William Marshall		162	64 80
John Masterson		90	36 00
J. Meehan		84	33 60
Andrew Melville		163	65 20
Leonard Meyer		19	7 60
Charles F. Miller		178	71 20
Frank Miller		51	20 40
Henry Morgan		23	9 20
R. W. Moore		355	142 00
William S. Moore		236	94 40
J. C. Motherhed		289	115 60
D. A. Murphy		8	3 20
C. K. Nalley		328	131 20
E. Nash		47	18 80
William M. Nicholson		159	63 60
George A. O'Donnell		254	101 60
John O'Reilly		367	146 80
Charles J. Orem		126	50 40
George W. Orem		69	27 60
T. F. Pendel		183	73 20
F. C. Philpitt		196	78 40
Milton Phillips		184	73 70
Joseph Portch		28	11 20
Edwin F. Price		64	25 60
John Pridgeon		170	68 00
Ed. P. Pumphrey		16	6 40
J. W. Pyemont		44	17 60
James Read		3	1 20
Richard Roberts		205	82 00
James A. Ryan		127	$50 80
Gale Sherman		42	16 80
C. P. Shettle		138	55 20
W. P. Slater		209	83 60
A. A. Smith		563	225 20
Bernard J. Smith		49	19 60
Fred. P. Smith		27	10 80
Thomas F. Stewart		90	36 00
James A. Stockman		184	73 60
S. E. Stratton		312	124 80
Peter Swift		205	82 00
David A. Thompson		338	135 20
W. N. Tincher		125	50 00
Dennis Toomey		266	108 40
George L. Tracey		320	128 00
John F. Van Horn		64	25 60
R. W. Wade		215	86 00
Fred. Wagner		8	3 20
John Walde		326	130 40
E. Wakeling		307	122 80
Charles H. Walker		64	25 60
John E. Walsh		192	76 80
H. Wiese		24	9 60
George K. White		279	111 60
George M. White		88	35 20
John White		64	25 60
Robt. H. Zimmerman		1,231	492 40
Kate Bennett		250	57 50
Mamie E. Barry		305	70 15
Mary Barry		8	1 84
B. M. Bartlett		350	82 80
Indiana Cowling		28	6 44
A. Dickins		313	71 99
Jennie H. Fitch		44	10 12
Mary H. Fitz Patrick		8	1 84
Jennie Goss		36	8 28
E. J. Hooper		51	11 73
Jennie A. Jenkins		52	11 96
Ella A. Johnston		36	8 28
Innocentia McGill		36	8 28
Emma Miller		323	74 29
D. A. Mortimore		16	3 68
Kate A. Murphy		16	3 68
Beatrice Prather		28	6 44
Mary A. Prather		196	45 08
Bessie B. Throckmorton		44	10 12
I. M. Rutherford		267	61 41
W. T. Kelly		52	18 20
R. M. Campbell		64	20 00
James Cavanaugh		224	67 00
John T. Ferguson		12	3 00
Michael Carroll		20	5 00
A. D. Coleman		46	11 50
Wm. Lauders		16	4 00
Jas. A. Lee		8	2 00
Burr Lucas		28	7 00
C. McDevitt		14	3 50
Augustus Schwartz		8	2 00
PIECEWORK.			
J. W. Barnes			189 35
Jas. H. Brooks			4 00
W. J. Caldwell			48 00
W. R. Carrigan			135 95
E. Cornman, jr			34 65
Geo. A. Crump			106 55
J. M. Eggleston			129 15
Henry Ellsworth			116 55
Wm. J. Galbraith			90 95
Olive I. Gilmore			202 95
Annie L. Grove			238 20
May M. Grove			78 40
G. F. Hammar			101 85
James L. Harper			39 15
F. C. Helmick			122 75
Thomas Hughes			109 56

l.—*Persons employed in the publication of the Tenth Census Reports, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
ohnson, jr			$97 05	F. W. Conover			$46 75
.. Kennedy			177 00	Mattie Cook			63 27
. Leahy			9 00	M. Corbin			92 50
Light			156 45	M. Courtney			28 52
McKeon			171 35	Ann Cowan			93 77
Fishler			92 00	Janie Cox			24 35
Mitchell			54 25	Georgie E. Crawford			92 44
M. Myers			4 10	Nellie Cronin			13 96
orter			104 40	M. A. Crooker			32 17
'ost			78 95	Ada M. Cross			36 06
Redfield			63 79	L. M. Cross			9 16
klin Sewell			74 17	Kate Cunningham			35 79
hiel			37 40	C. Daily			36 64
ourgeon			130 80	H. Daily			28 91
. Turner			42 05	A. Daly			7 82
ie Vansant			52 65	E. Davis			45 38
F. Warren			3 20	Maggie B. Davis			68 94
. Young			43 10	M. Dawson			92 21
hern			25 39	E. A. Dickinson			65 36
dams			91 65	S. Dickson			31 69
damson			5 47	N. Diggs			69 37
brose			27 24	Ida Dinger			11 35
ndrews			69 42	Maggie L. Dodd			25 67
hony			24 91	I. E. Doherty			36 39
man			33 95	Lillie J. Donn			42 84
Baker			63 67	E. Donnelly			8 75
er			36 07	M. Donnelly			27 21
a Ball			50 58	Katie Donohue			59 69
almain			3 34	J. A. Dougherty			6 92
anks			18 33	Lizzie Downie			80 31
laptista			9 61	J. L. Dowling			44 46
rett			53 00	J. A. Downing			59 38
arrington			4 59	P. Duffy			48 92
y			29 66	Kate Dunne			39 06
ngs			6 49	A. Dutrow			11 79
A. Black			9 46	O. Dwyer			57 10
owie			25 89	Sarah Edmunds			4 89
ce			49 53	J. Elliott			19 50
awner			42 27	I. R. Ellis			45 76
sford			4 59	Mary E. Ellsworth			88 11
Brick			41 08	Minnie Elwood			4 86
Brintnall			18 38	Laura V. Etter			91 70
rooke			83 72	Mary Evans			43 49
rown			71 39	V. M. Evans			33 81
Bryan			41 09	Annie P. Farley			82 18
Bryant			2 46	Ellen Farrell			7 38
. Buete			274 57	Sallie Faulkner			39 12
urgess			63 02	N. Felger			25 51
urgess			94 27	Minnie Fitzgerald			36 29
E. Burke			38 42	Kate Flemming			16 34
urr			92 91	H. C. Flynn			35 55
E. Burrows			36 79	J. B. Forbes			56 57
urwell			28 17	S. Fordham			25 58
cher			25 17	C. Fowler			30 31
irton			9 52	N. B. Franklin			64 09
d Cahill			56 88	M. Gartrell			85 76
allahan			23 95	Belle Gates			2 50
L. Carrico			62 52	Bell Gheen			41 22
arter			58 03	M. Gibbs			8 09
Carter			10 83	Louise Gibson			39 48
th Casper			44 71	J. F. Gilson			24 60
e			83 90	Ellie C. Glasgow			83 47
Chinn			8 59	E. Glendenning			40
hritzman			9 25	Elizabeth Gorman			5 79
ett			78 80	E. Gould			9 15
kson			83 98	I. C. Greene			59 94
. Clayville			1 84	A. I. Griffith			11 82
Clements			48 47	Carrie Guggenheimer			34 84
ne Clone			17 39	May M. Hammond			20 04
Coberth			39 64	M. Hall			45 63
ins			44 93	Ella C. Henry			44 76
. Collins			10 97	Betty M. Hargrove			82 93
ns			10 00	Gertrude Harleston			36 09
mbus			31 38	Nettie Harlow			24 09
Connell			4 98	Delia Harper			45 78
nolley			5 91	E. J. Harper			49 00
nor			24 28	L. V. Harper			26 65

No. 24.—*Persons employed in the publication of the Tenth Census Reports, &c.*—Continued.

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
M. A. Harper			$23 96	H. McNamee			$48 85
Clara A. Harner			39 94	Jennie E. Manning			22 49
F. V. Harris			31 05	A. R Mallory			59 82
T. Harrison			69 74	J. E. Mansfield			37 75
F. A. Haskett			89 08	M. A. Mapes			6 73
E. Havenner			90 41	M. E. Marceron			56 00
M. E. Hayes			9 68	A. Martin			76 01
L. Hays			31 68	Alice Martin			5 48
Ella C. Hayward			4 04	Lizzie Martin			14 42
Mary E. Head			80 90	S. Martin			25 88
E. Heffell			20 50	Lulu M. Mason			64 13
Georgie Heinline			11 57	C. Maus			10 00
J. Hellings			61 74	Sarah J. May			38 79
Katie Hensan			40 49	Carrie Meals			16 60
S. Hess			25 50	M. G. Meals			28 31
Edith A. Hicks			1 04	J. A. Milligan			3 49
A. Higgins			62 42	Sallie Mills			63 52
L. Hill			34 20	S. Moens			41 02
A. Hodge			2 40	Bessie S. Mohun			16 97
M. E. Hoover			13 41	M. Monday			17 03
Lucy Horton			4 05	P. Mooney			8 87
Ella House			52 11	Laura A. Moore			88 72
C. Howard			68 10	Maggie Morgan			6 29
Mary Hubbel			60 04	M. Morris			11 10
Mary L. Hullings			44 00	Lizzie A. Morrow			67 04
A. Husted			3 04	M. M. Morrow			23 68
S. Husted			13 41	Hattie H. Morse			11 25
P. F. Jeffries			17 70	Lizzie C. Murphy			42 37
H. V. Jeffries			11 21	Josephine Murphy			23 02
H. Johnson			7 23	Jenny Myerberg			4 86
L. H. Johnson			97 11	Susie Mylan			7 50
M. A. Johnson			59 91	L. M. Nash			46 36
E. Jones			45 00	M. J. Neale			2 63
G. A. Jones			35	M. B. Norbeck			54 14
M. W. Jones			20 60	May E. Norbeck			15 26
Jennie Kauffman			44 84	Annie O'Brien			11 82
Katie A. Keefe			11 48	Maggie O'Connell			38 41
T. Keefe			171 00	Lena M. O'Leary			18 18
Ella Kelly			27 38	M. O'Leary			24 78
Mary E. Kelly			4 29	Mary A. Orme			45 71
P. Kennelly			169 75	M. E. Owner			2 00
S. E. Kerper			9 09	C. Palmer			44 98
M. J. Kersey			1 23	J. T. Parham			31 44
Maria Keys			109 56	Ella Patterson			38 15
Julia King			3 36	M. V. Pemberton			90 02
M. Kirsch			5 82	E. C. Phillips			11 79
R. Korts			46 51	Odessa Pierce			7 70
Emma M. Kroger			8 47	Emiley Pierce			80
M. La Bille			28 50	Julia E. Plant			25 69
E. Lackey			4 18	A. Pleasants			43 79
Rosa La Covey			71 67	Sarah E. J. Porter			85 82
Ellen Landvoigt			68 31	E. J. Proctor			31 08
E. Laporte			11 66	Emma Pumphrey			67 67
Mary Larman			38 87	I. E. Rabbitt			11 21
A. V. Lee			40 75	Ella Randolph			41 12
Etta Leonard			65	K. Reapsomer			129 25
Fannie Littleton			4 54	M. Reid			90 04
D. Lord			92 65	Mary Riley			9 37
Florence Lusby			51 99	D. Reilly			27 84
Mary E. Lynch			44 55	Agnes Renehan			24 63
Hattie McCabe			7 37	E. R. Richards			38 00
Nettie L. McCampbell			33 01	Katie Richmond			37 83
Annie S. McCarter			43 86	Dora C. Riecks			7 64
A. McCarthy			33 14	Effa J. Ritchie			22 53
M. M. McCarthy			7 41	Josie G. Robinson			19 79
Mamie McClelland			26 24	Louise Rockfellow			69 73
F. M. McCristal			49 29	A. Rogers			66 56
Mary McGinnell			27 30	L. Rogier			44 75
Minnie F. McGowan			43 66	M. A. Ross			91 05
E. V. McGraw			56 02	L. Russell			6 50
Belle J. McIntyre			68 03	M. Russell			1 85
A. C. McKelden			23 39	H. E. Ryder			56 06
L. A. McKenney			38 69	Julia M. Savage			12 16
M. J. McLeod			45 61	M. A. Sayres			75 28
M. McNamara			14 43	Rose E. Schneider			79 73
Mary A. McNamara			54 09	L. Selvey			42 44
Amelia McNulty			50 45	J. E. Segerson			11 58

.—*Persons employed in the publication of the Tenth Census Reports, &c.*—Continued.

Name.	Time employed. Days.	Time employed. Hours.	Amount received.	Name.	Time employed. Days.	Time employed. Hours.	Amount received.
ry			$40 88	A. A. Colclesser			$95 68
herd			11 70	Sara Collins			79 58
homo			43 33	Alice Corcoran			83 26
Sierenberg			25 74	E. A. Cox			85 56
y			12 43	F. F. Crupper			84 64
ibley			32 55	Isabella Cunningham			97 06
mith			44 27	Mary Daniels			96 60
K. Smith			42 99	Nannie Daniel			83 26
V. Smoot			20	S. C. Darby			20 70
pper			50 59	Ellen Donaldson			30 82
palding			11 42	M. E. Dow			85 56
d. Sprandel			92 86	Kate Dowden			98 44
B. Stewart			31 82	Maud Dubant			75 90
V. Stone			39 70	P. Dubant			20 24
Strong			9 82	C. Durham			97 98
ivan			26 00	Ronie Elms			89 70
ivan			4 25	Anna Erb			92 00
d. Summers			5 70	M. M. Farrar			16 56
s Szegedy			49 19	M. Farrell			20 70
albot			21 59	Lucy Fister			5 52
e E. Tennyson			24 97	Katie Flemming			83 72
mas			9 90	S. W. Folk			91 54
ta Thompson			12 45	Emma V. Ford			17 02
Thompson			58 53	Kate Fox			79 42
M. Thorn			11 21	A. C. Francis			98 90
oole			61 62	Emma B. Furlong			16 10
e E. Toomey			11 39	G. Gantt			97 98
. Town			28 62	Minnie Georges			94 36
Trumbo			9 36	L. Gibney			68 08
E. Twomey			25 17	Frances Graves			46 00
B. Tyson			11 85	Georgianna Groshon			27 60
alker			54 75	Nettie A. Groshon			31 74
Valker			33 47	Belle Halliday			91 08
Valker			56 34	Julia Hanlan			92 00
Walsh			43 28	Katie E Harrington			96 60
E. Walsh			53 91	Carrie F. Hartwell			92 92
rd			16 05	S. G. Hayden			34 04
Waters			40 04	Louisa Henry			93 84
Wathen			36 08	Mary E. Hill			82 80
Vatson			5 79	W. J. Hodson			75 44
bster			37 46	Mary Honan			85 10
L. Wells			27 58	Ora E. Hubler			92 46
Wetzel			16 33	Annie A. Hurley			63 02
te			5 04	Emma Jeffries			80 50
L. Wilke			52 63	Annie E. Johnson			78 66
Villiams			41 15	Mary Joyce			48 30
Wilson			11 42	Annie R. Kealey			19 32
son			16 72	A. B. Kleinhenn			97 98
tt Wilson			25 10	Amanda Klotz			20 70
Z. Wilson			95 23	Delia C. Lang			21 16
Withers			102 35	M. A. Lenihan			16 56
Wood			11 61	Carrie E. Lewis			96 14
Woodward			34 91	M. G. Lillie			21 62
Woolsey			11 25	Annie E. Long			5 52
tes			38 00	Ella F. Long			93 38
ng			24 22	Rosa Lydick			17 02
Anderson			90 16	Johnana Lyons			37 72
F. Ashburn			15 18	Kate Lyons			21 16
agley			16 10	Marion McGivern			74 52
E. Bailey			93 84	M. A. McGraw			14 26
ey			34 50	E. McKenzie			81 42
Ball			93 38	Carrie B. McKnight			28 06
Barnett			44 62	Hattie McVhill			19 78
Barrett			3 22	Sallie H. Macnichol			97 06
eth A. Bell			74 98	Ebenetta Magoffin			28 06
ie Blankman			16 10	Amelia Moreno			80 50
V. Bowler			30 36	M. V. Martin			97 52
E. Brown			61 64	L. A. Massie			16 56
E. Burford			51 06	I. Miller			23 92
urr			98 44	Julia T. Miller			16 10
urr			49 22	Katie Morris			21 16
Butler			5 98	L. T. Morris			95 22
Butler			14 26	Mary Mullen			59 80
M. Cavanagh			97 98	Maggie Murphy			4 60
Chamberlin			94 76	Mary A. Murray			81 88
E. Clayville			37 26	Mary Nasser			20 70
F. Clokey			96 44	Mary Nolan			71 76

No. 24.—*Persons employed in the publication of the Tenth Census Reports, &c.*—Continued

Name.	Time employed.		Amount received.	Name.	Time employed.		Amount received.
	Days.	Hours.			Days.	Hours.	
Maggie O'Dea			$20 70	Mary A. Smith			$35 42
Kate O'Gorman			98 44	Mary Snow			63 02
M. E. Owner			68 54	Sarah Sorrell			52 44
Millie Parker			89 24	Ella M. Springer			96 52
Martha K. Payne			21 16	M. J. Stanley			71 76
Lou M. Pemberton			73 60	C. Staunton			98 90
W. A. Plant			13 34	K. Stevens			50 60
Kate M. Price			98 90	Sue Stevens			20 70
Sadie Pruette			63 02	Martha Stewart			34 50
M. Purcell			93 38	Maggie Sullivan			20 24
Julia Ready			20 70	Rosie Sullivan			22 08
Mary A. Rearden			20 24	Cheney Swain			78 66
Ella M. Ridgely			4 14	Ella Torrey			16 56
Clara J. Robinson			96 14	L. F. Walker			96 60
E. L. Rollins			91 08	J. T. Warwick			18 86
Lucy V. Ruby			96 60	E. E. Wernwag			61 18
Anna V. Shaw			89 24	Martha Wilkins			93 84
L. A. Shepherd			29 90	Margaret Williams			54 28
H. Sherwood			40 48	L. E. Windsor			93 84
Margaret Shields			97 98	Julia A. Wolff			93 38
Mary J. Sinclair			68 08	S. L. Wood			21 16
Kate G. Smith			34 50	Josie Wright			74 52

ORDERS FOR PRINTING.

The following orders were made during the second session of the Forty-eighth Congress for public documents, exclusive of the usual number:

BY ACTS AND JOINT AND CONCURRENT RESOLUTIONS.

CEREMONIES TO BE AUTHORIZED UPON THE COMPLETION OF THE WASHINGTON MONUMENT.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is hereby directed to cause to be executed in the Bureau of Engraving and Printing such suitable cards of invitation as may be prescribed by the commission appointed by the joint resolution of May thirteenth, eighteen hundred and eighty-four, to make arrangement for suitable ceremonies upon the completion of the Washington Monument, and the Public Printer is directed to print such necessary programmes and cards as may be required by said commission. And the ceremonies provided for by said commission shall take place on the twenty-first day of February, anno Domini eighteen hundred and eighty-five. And to defray the expenses incurred under the provisions of said joint resolution the additional sum of seven thousand five hundred dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated.—*Sess. L., p.* 515, *December* 18, 1884.

LIEUTENANT SCHWATKA'S REPORT ON ALASKA.

Resolved by the Senate (the House of Representatives concurring), That the official report of Lieutenant Frederick Schwatka, United States Army, of his military reconnaissance be printed, and that 3,500 additional copies be printed, of which 1,000 copies shall be for the use of the Senate, 2,000 copies for the use of the House, and 500 copies for the use of the War Department.—*S. January* 8, 1885, *H. R. February* 7, 1885.

INTERNATIONAL GEOGRAPHICAL CONGRESS AT VENICE.

Resolved by the Senate (the House of Representatives concurring), That the report of Captain George M. Wheeler, United States Army, on the Third International Geographical Congress and Exhibition at Venice, Italy, with the accompanying illustrations, transmitted to the Senate by the Secretary of War on the 10th of December, 1883, be printed in quarto form, and that 3,500 additional copies be printed; of which 1,000 copies shall be for the use of the Senate, 2,000 copies for the use of the House, and 500 copies for the Department of War.—*S. January* 14, 1885, *H. R. February* 17, 1885.

REPORT ON LABOR IN EUROPE.

Resolved by the Senate (the House of Representatives concurring), That the letter of the Secretary of State dated December 12, 1884, and the accompanying reports of United States consuls on labor in Europe, be printed; and that 1,500 additional copies be printed for the use of the Senate, 2,500 copies for the use of the House of Representatives;

and for the use of the Department of State 4,000 copies; and 10,000 additional copies of the Secretary's letter, of which 1,500 shall be for the use of the Senate, 2,500 for the use of the House of Representatives, and 6,000 for the use of the Department of State.—*S. January* 14, 1885, *H. R. February* 21, 1885.

FRENCH SPOLIATION CLAIMS.

Resolved by the Senate (the House of Representatives concurring), That there be printed 3,000 copies of the communication of the Secretary of State, containing a list of claimants against France by reason of the spoliations prior to the 31st day of July, 1801; of which 1,000 copies shall be for the use of the Senate, and 2,000 copies for the use of the House of Representatives.—*S. January* 24, 1885, *H. R. March* 2, 1885.

SMITHSONIAN REPORT, 1884.

Resolved by the Senate (the House of Representatives concurring), That the Annual Report of the Smithsonian Institution and National Museum for the year 1884 be printed, and that there be printed 16,060 extra copies; of which 3,000 copies shall be for the use of the Senate, 6,060 for the use of the House of Representatives, and 7,000 for the use of the Smithsonian Institution.—*S. January* 26, 1885, *H. R. February* 4, 1885.

REPORT OF COAST AND GEODETIC SURVEY, 1884.

Resolved by the Senate (the House of Representatives concurring), That there be printed 3,000 extra copies of the report of the Superintendent of the Coast and Geodetic Survey, showing the progress made in said survey during the year ending June 30, 1884, for distribution by said Superintendent.—*S. January* 30, 1885, *H. R. February* 17, 1885.

TREATIES AND CONVENTIONS.

Resolved by the Senate (the House of Representatives concurring), That there be printed 9,500 additional copies of the treaties and conventions transmitted to the Senate by the President in his message of January 23, 1885, of which 1,500 copies shall be for the use of the Senate, 3,000 copies for the use of the House, 4,000 copies for the use of the Department of State, and 1,000 copies for distribution by the Interior Department among public libraries not depositories under existing law; each Senator, Representative, and Delegate in Congress to designate two libraries to which copies of the work shall be thus sent. And the Public Printer is also authorized to print and have bound 2,000 additional copies to be sold at actual cost and 10 per cent. added.—*S. February* 9, 1885, *H. R. March* 3, 1885.

DESCRIPTIVE CATALOGUE OF GOVERNMENT PUBLICATIONS.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed and half-bound in leather, with the exception of the reserve sets, which shall be full-bound in leather, six thousand six hundred copies of the Descriptive Catalogue of Government Publications, of which one thousand five hundred copies shall be for the use of the Senate; three thousand copies for

the use of the House of Representatives; four copies for the library of the Senate; twelve copies for the library of the House; sixty copies, fifty of which shall be for foreign exchanges, for the Library of Congress; two copies for the library of the Executive Mansion; forty copies for the Department of State; a copy to be sent to each legation of the United States abroad; twenty-five copies for the Treasury Department, including its Bureaus; twenty copies for the War Department, including one for the library of the Military Academy at West Point; twenty copies for the Navy Department, including one for the library of the Naval Academy at Annapolis and one copy for the Naval Observatory at Washington; twenty-five copies for the Department of the Interior, including its Bureaus, the Railroad Commission, the Geological Survey, and the Census Office; eight hundred and eighteen copies to be delivered to the Secretary of the Interior for distribution to such libraries, not depositories of public documents as shall be named for this purpose by each Senator, Representative, and Delegate in Congress; ten copies for the Post-Office Department and its Bureaus; ten copies for the Department of Justice, including a copy for the library of the Supreme Court and a copy for the library of the Court of Claims; two copies for the Department of Agriculture; two copies for the Smithsonian Institution; two copies for the Government Printing Office; one thousand copies to be bound and distributed with the reserved documents, and fifty copies for the use of the Joint Committee on Public Printing, to be distributed among those who have aided in the compilation of the work.

SEC. 2. That the Public Printer shall print five hundred additional copies of the above-named work, to be half-bound in leather, and sold at ten per centum advance on cost price, to any person applying for the same, a notice stating the price to be inserted at least once a week in the daily edition of the Congressional Record until the edition shall have been disposed of.

SEC. 3. That all provisions of law under which any additional copies of the above-named work might be printed are, so far as they apply to the above-named work, repealed.—*Sess. L., pp.* 516, 517, *February* 9, 1885.

EULOGIES UPON THE LATE WILLIAM A. DUNCAN.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed of the eulogies delivered in Congress upon the late William A. Duncan, a Representative in the Forty-eighth Congress from the State of Pennsylvania, twelve thousand five hundred copies, of which three thousand shall be for the use of the Senate and nine thousand five hundred for the use of the House of Representatives. And the Secretary of the Treasury be, and he is hereby, directed to have printed a portrait of the said William A. Duncan to accompany said eulogies; and for the purpose of engraving or printing said portrait the sum of five hundred dollars, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated.—*Sess. L., p.* 517, *February* 12, 1885.

EULOGIES UPON THE LATE JOHN H. EVINS.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed of the eulogies delivered in Congress upon the late John H. Evins, a Representative in the Forty-eighth Congress from the State of South Carolina, twelve thousand five hundred copies, of which three thousand copies shall be

for the use of the Senate and nine thousand five hundred for the use of the House of Representatives. And the Secretary of the Treasury be, and he is hereby, directed to have printed a portrait of the said John H. Evins to accompany said eulogies, and for the purpose of engraving and printing said portrait the sum of five hundred dollars, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated.—*Sess. L., p.* 518, *February* 12, 1885.

REPORT OF NATIONAL ACADEMY OF SCIENCES, 1884.

Resolved by the Senate (*the House of Representatives concurring*), That the report of the National Academy of Sciences for 1884, with its appendices, be printed in the usual octavo form, but that the eight accompanying memoirs be printed in quarto form, and that 4,500 additional copies of the report and memoirs be printed; of which 1,000 copies shall be for the use of the Senate, 2,000 copies for the use of the House of Representatives, and 1,500 copies for the use of the National Academy of Sciences.—*S. February* 14, 1885, *H. R. February* 28, 1885.

REPORT ON LABOR AND CAPITAL.

Resolved by the Senate (*the House of Representatives concurring*), That the report of the Senate Committee on Education and Labor on the relations between labor and capital, with the accompanying documents, be printed, and that 25,000 additional copies unbound be printed, of which 6,000 shall be for the use of the Senate, 13,000 for the use of the House, 5,000 for the use of the Bureau of Labor Statistics, and 1,000 for the use of the Senate Committee on Education and Labor.—*S. February* 15, 1885, *H. R. February* 28, 1885.

FISH AND FISHERIES, 1885.

Resolved by the Senate (*the House of Representatives concurring*), That the report of the Commissioner of Fish and Fisheries for the year 1885 be printed, and that there be printed 11,000 extra copies, of which 3,000 shall be for the use of the Senate, 6,000 for the use of the House, 1,500 for the use of the Commissioner of Fish and Fisheries, and 500 for sale by the Public Printer under such regulations as the Joint Committee on Printing may prescribe, at a price equal to the additional cost of publication and 10 per cent. thereto added; illustrations to be obtained by the Public Printer under the joint direction of the Committee on Printing.—*S. February* 24, 1885, *H. R. March* 2, 1885.

ASTRONOMICAL AND METEOROLOGICAL OBSERVATIONS, 1881 AND 1882.

Resolved by the Senate (*the House of Representatives concurring,*) That the annual volume of the Astronomical and Meteorological Observations of the Naval Observatory for the years 1881 and 1882 be printed, and that 2,000 additional copies of each volume be printed, of which 400 copies shall be for the use of the Senate, 800 copies for the use of the House, and 800 copies for the use of the Navy Department, or for sale at the cost of paper and printing, in accordance with section 422 of the Revised Statutes of the United States.—*S. February* 25, 1885, *H. R. March* 2, 1885.

REPORT OF THE HEALTH OFFICER OF THE DISTRICT OF COLUMBIA.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Public Printer be, and he is hereby, authorized to print two thousand five hundred extra copies of the Annual Report of the Health Officer of the District of Columbia; one hundred for the use of the Senate, three hundred and fifty for the use of the House of Representatives, and two thousand and fifty for the use of the said Health Officer of the District of Columbia.—*Sess. L., p.* 335, *February* 26, 1885.

LIEUTENANT P. H. RAY'S REPORT OF EXPEDITION TO POINT BARROW, ALASKA.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That two thousand additional copies of Lieutenant P. H. Ray's report of the International Polar Expedition to Point Barrow, Alaska, be printed for distribution by the Chief Signal Officer of the Army.—*Sess. L., p.* 518, *February* 26, 1885.

REPORT ON PRECIOUS METALS, 1884.

Resolved by the House of Representatives (*the Senate concurring*), That the report of the Director of the Mint on the production of the precious metals of the United States for the year 1884 be printed, and that 9,000 extra copies be printed, 4,000 copies for the use of the House of Representatives, 2,000 copies for the use of the Senate, and 3,000 copies for the use of the Director of the Mint.—*H. R., February* 28, 1885; *S., March* 2, 1885.

MONOGRAPH TWO OF THE PUBLICATIONS OF THE UNITED STATES GEOLOGICAL SURVEY.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed at the Government Printing Office the usual number of monograph second of the publications of the United States Geological Survey, with the necessary illustrations, and to conform to the editions already issued by the Survey.—*Sess. L., p.* 519, *March* 2, 1885.

REPORTS OF THE DIRECTOR OF THE BUREAU OF ETHNOLOGY.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed at the Government Printing Office fifteen thousand five hundred copies each of the sixth and seventh annual reports of the Director of the Bureau of Ethnology, with accompanying papers and illustrations, and uniform with the preceding volumes of the series; of which three thousand five hundred shall be for the use of the Senate, seven thousand for the use of the House of Representatives, and five thousand for distribution by the Bureau of Ethnology.—*Sess. L., p.* 519, *March* 2, 1885.

REPORTS OF THE DIRECTOR OF THE UNITED STATES GEOLOGICAL SURVEY.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed at the Government Printing Office, in addition to the number already ordered by law,

fifteen thousand five hundred copies of each of the sixth and seventh annual reports of the Director of the United States Geological Survey, uniform with the preceding volumes of the series; of which three thousand five hundred shall be for the use of the Senate, seven thousand for the use of the House of Representatives, and five thousand for the distribution by the Geological Survey.—*Sess. L., p.* 519, *March* 2, 1885.

REPORT OF THE COMMISSIONER OF EDUCATION, 1883 AND 1884.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That of the report of the Commissioner of Education for eighteen hundred and eighty-three and eighteen hundred and eighty-four there be printed six thousand copies for the use of the Senate, twelve thousand copies for the use of the House of Representatives, and twenty thousand copies for distribution by the Commissioner.—*Sess. L., p.* 519, *March* 2, 1885.

CERTAIN NAVAL AND MILITARY REPORTS.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed at the Government Printing Office four thousand five hundred copies of each of the following reports: The report of Lieutenant-Commander C. F. Goodrich, United States Navy, on the "British Naval and Military Operations in Egypt;" the report of Lieutenant Fisher M. Wright, United States Navy, on the "Operations of the French Navy during the Recent War with Tunis;" the report of Lieutenant Theodorus B. M. Mason, United States Navy, on the "War on the Pacific Coast of South America between Chili and the Allied Republics of Peru and Bolivia," one thousand copies of which shall be for the use of the Senate, two thousand copies for the use of the House of Representatives, and one thousand five hundred copies for the use of the Navy Department.—*Sess. L., p.* 520, *March* 3, 1885.

ANNUAL REPORTS OF THE SMITHSONIAN INSTITUTION.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the annual reports of the Smithsonian Institution shall be hereafter printed at the Government Printing Office, in the same manner as the annual reports of the heads of Departments are now printed, for submission in print to the two Houses of Congress.—*Sess. L., p.* 520, *March* 3, 1885.

ANNUAL REPORT OF THE BUREAU OF ANIMAL INDUSTRY, 1885.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed fifty thousand copies of the second Annual Report of the Bureau of Animal Industry for the year eighteen hundred and eighty-five; of which ten thousand shall be for the use of members of the Senate, thirty-five thousand for the use of the members of the House of Representatives, and five thousand for the use of the Commissioner of Agriculture; the illustrations to be executed, under the supervision of the Public Printer, in accordance with directions of the Joint Committee on Printing, the work to be subject to the approval of the Commissioner of Agriculture.

SEC. 2. That the sum of twenty-five thousand eight hundred and twenty-seven and sixty-hundredths dollars, or so much thereof as may

be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to defray the cost of the publication of said report.—*Sess. L., p.* 520, *March* 3, 1885.

REPORT OF THE COMMISSIONER OF AGRICULTURE, 1885.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed three hundred and ten thousand copies of the Annual Report of the Commissioner of Agriculture for the year eighteen hundred and eighty-five; two hundred thousand copies for the use of members of the House of Representatives, eighty thousand for the use of members of the Senate, and thirty thousand copies for the use of the Department of Agriculture; the illustrations for the same to be executed, under the supervision of the Public Printer, in accordance with directions of the Joint Committee on Printing, the work to be subject to the approval of the Commissioner of Agriculture.

SEC. 2. That the sum of two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to defray the cost of the publication of said report.—*Sess. L., p.* 520, 521, *March* 3, 1885.

INVESTIGATION OF THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in addition to the authorized number five thousand copies of the report of the Committee on Military Affairs on the investigation of the National Home for disabled volunteers be printed one thousand for the use of the Senate, and four thousand for the use of the House of Representatives.—*Sess. L., p.* 521, *March* 3, 1885.

EULOGIES UPON THE LATE HENRY B. ANTHONY.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed of the eulogies delivered in Congress upon the late Henry B. Anthony, a Senator from Rhode Island, with an account of his funeral, prepared under the direction of the Joint Committee on Public Printing, twelve thousand copies, of which four thousand shall be for the use of the Senate and eight thousand for the use of the House of Representatives; and the Secretary of the Treasury is hereby directed to have printed a portrait of said Henry B. Anthony, to accompany said eulogies; and for engraving and printing said portrait the sum of five hundred dollars, or so much as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated.—*Sess. L., p.* 344, *March* 3, 1885.

DEDICATION OF THE WASHINGTON MONUMENT.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the report and proceedings of the commission to provide suitable ceremonies for the dedication of the Washington Monument, together with the engraved card attached thereto, be printed, under the direction of the Joint Committee on Printing, and that twenty-six thousand five hundred additional copies be printed, eight thousand copies of the same for the use of the Senate,

sixteen thousand copies for the use of the House of Representatives, five hundred copies for distribution by Lieut. Gen. P. H. Sheridan, U. S. A., to the civil and military organizations which participated in the procession, five hundred copies for the Washington National Monument Association for distribution among its members, five hundred copies for distribution by Col. Thomas L. Casey, Engineer, among the mechanics and workmen employed in the erection of the monument, five hundred copies for the Hon. Robert C. Winthrop, and five hundred copies to the Hon. John W. Daniel; and for the purpose of defraying the expense of printing the said attached card, the sum of two thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated.—*Sess. L., pp.* 344, 345, *March* 3, 1885.

SENATE RESOLUTIONS.

Resolved, That the testimony taken by a subcommittee of the Senate Committee on Indian Affairs concerning the condition of certain Indian tribes in the State of California, under resolution of the Senate of July 4, 1884, be printed for the use of the committee only.—*S. December* 2, 1884.

Ordered, That there be printed for the immediate use of the Senate the usual number of the message of the President and the reports proper, without appendices, of the heads of the several Executive Departments.—*S. December* 3, 1884.

Ordered, That the bill (S. 2112) to establish a commission to regulate inter-State commerce, and for other purposes, be reprinted.—*S. December* 9, 1884.

Ordered, That the dispatches of Mr. George Maney, formerly United States minister to the United States of Colombia, relative to the Panama Canal, furnished to the Committee on Foreign Relations by the Department of State on the 29th day of March, 1884, be printed for the use of the Senate.—*S. December* 10, 1884.

Resolved, That two thousand additional copies of the convention for commercial reciprocity between the United States and Spain, providing for an intimate and formal exchange of products with the islands of Cuba and Porto Rico, signed at Madrid, November 18, 1884, and from which the injunction of secrecy has been removed, be printed for the use of the Senate.—*S. December* 10, 1884.

Resolved, That the Public Printer is instructed to procure 2,000 copies of the lithographic map prepared by Joseph Nimmo, Chief of the Bureau of Statistics, under the direction of the Secretary of the Treasury, to accompany his report on the improvement of Galveston Harbor, and incorporate the same in the majority report of the Committee on Commerce accompanying Senate bill No. 1652.—*S. December* 16, 1884.

Ordered, That the bill (S. 60) to declare certain lands subject to taxation be reprinted.—*S. January* 8, 1885.

Resolved, That there be printed for the use of the Senate 500 copies of each of the following documents, the same to be included in one document, namely: (1) Senate Executive Document No. 112, Forty-sixth Congress, second session. (2) Senate Executive Document No. 194, Forty seventh Congress, first session. (3) Senate Executive Document No. 26, Forty-eighth Congress, first session.—*S. January* 13, 1885.

Resolved, That Senate Executive Document No. 78, Forty-seventh Congress, first session, parts 1, 2, and 3, be included in the publication of the 500 copies of Senate Executive Documents No. 112, Forty-sixth

Congress, No. 194, Forty-seventh Congress, and No. 26, Forty-eighth Congress, ordered printed by resolution of the Senate on the 13th instant.—*S. January* 15, 1885.

Resolved, That the Public Printer be, and he is hereby, directed to print, for the use of the Select Committee on Ordnance and War Ships, and under the direction thereof, the statements and tables prepared to accompany the report of said committee.—*S. January* 15, 1885.

Ordered, That the letter of the Secretary of War relating to the bill to prevent the discharge of graduates of the Military Academy from the service of the United States be printed for the use of said committee.—*S. January* 17, 1885.

Resolved, That there be printed, for the use of the Senate, 1,000 copies of Senate bill No. 1820, to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the 31st day of July, 1801, as passed by the Senate December 9, 1884, and by the House of Representatives, without amendment, January 14, 1885, and that the said copies be furnished to the Senate document room.—*S. January* 20, 1885.

Resolved, That the evidence taken by the Committee on Indian Affairs under resolution of the Senate of date December 3, 1884, be printed for the use of the committee.—*S. January* 24, 1885.

Ordered, That 1,000 extra copies of the bill (H. R. 6771) to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862; also to amend an act approved July 2, 1864, and also an act approved May 7, 1878, both in amendment of said first-mentioned act; and the reported amendment, together with the report (No. 1097) of the Committee on the Judiciary thereon, be printed in pamphlet form for the use of the Senate.—*S. January* 28, 1885.

Resolved, That the papers accompanying the report of the Secretary of State relative to the landing of foreign telegraphic cables upon the shores of the United States, transmitted by the President in response to a resolution of the Senate of May 2, 1884, be printed, and that 1,000 additional copies in paper covers be printed for the use of the Department of State.—*S. February* 13, 1885.

Resolved, That the Secretary of the Senate be, and he is hereby, authorized to have bound at the Government Printing Office 650 volumes of the Congressional Globe, furnished to the Senate Library under the joint resolution approved May 16, 1884.—*S. February* 13, 1885.

Resolved, That the annual report of the Librarian of Congress be printed, and that 500 additional copies, with covers, be printed for distribution by the Librarian.—*S. February* 24, 1885.

Resolved, That there be printed and bound for the use of the Senate, under the direction of the Committee on Rules, 1,000 additional copies of the revised Senate Manual.—*S. February* 28, 1885.

Ordered, That 1,000 additional copies of the bill (S. 1820) to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the 31st day of July, 1801, be printed.—*S. February* 28, 1885.

Resolved, That there be printed for the Committee on Privileges and Elections eighteen copies of the digest of the contested election cases of the Senate, ordered to be prepared under a resolution which passed the Senate February 26, 1885.—*S. March* 20, 1885.

HOUSE RESOLUTIONS.

Resolved, That there be printed 25,000 copies of the President's last annual message for the use of the House.—*H. R. December* 4, 1884.

Ordered, That the House Report No. 363, first session, Forty-eighth Congress, be reprinted.—*H. R. December* 11, 1884.

Ordered, That the Committee on Military Affairs have leave to print for their use preliminary copies of the report of the examination of United States military homes for disabled volunteer soldiers.—*H. R. December* 12, 1884.

Ordered, That the bill of the House (H. R. 5667) granting pensions to the soldiers and sailors of the Mexican war, and for other purposes, with amendments of the Senate thereto, be reprinted for the use of the House.—*H. R. December* 16, 1884.

Ordered, That the bill of the Senate (S. 1139) authorizing the construction of a building for the accommodation of the Congressional Library, with accompanying diagram, be reprinted for the use of the House.—*H. R. December* 17, 1884.

Ordered, That House Reports Nos. 322 and 390, third session Forty-sixth Congress, be reprinted.—*H. R. January* 5, 1885.

The Speaker. The Committee on Military Affairs, by unanimous consent, asks leave to have printed for its use testimony taken referring to sundry bills for the relief of various ex-officers of the Army. There being no objection, it was so ordered.—*H. R. January* 10, 1885.

Ordered, That the testimony now being taken before the Committee on the Payment of Pensions, Bounty, and Back Pay, be printed for the use of the committee.—*H. R. January* 22, 1885.

Ordered, That the Committee on Military Affairs have leave to print the petition and accompanying papers of J. R. Haskell in relation to the multicharge gun.—*H. R. January* 28, 1885.

Ordered, That House Report No. 2308 be reprinted for the use of the House.—*H. R. January* 28, 1885.

Ordered, That the bill of the Senate, S. 1372, be reprinted for the use of the House.—*H. R. January* 30, 1885.

Ordered, That House Report 2438 be reprinted for the use of the House.—*H. R. February* 3, 1885.

On motion of Mr. Lyman, by unanimous consent, the Committee on Military Affairs was given leave to have printed for the use of the committee the testimony taken by it on the subject of armor-penetrating breech-loading cannon.—*H. R. February* 7, 1885.

Resolved by the House of Representatives, That there be printed for the use of the House 1,000 additional copies of the Gun-Foundry Report, transmitted to the Senate by the President of the United States on the 22d of December last.—*H. R. February* 17, 1885.

Ordered, That 2,000 extra copies of the law relating to the French Spoliation claims be printed for the use of the House.—*H. R. February* 28, 1885.

Ordered, That the bill of the House (H. R. 8240) to regulate the coinage and to promote the circulation of gold and silver equally was ordered to be reprinted for the use of the House.—*H. R. February* 28, 1885.

DISTRIBUTION OF THE USUAL NUMBER.

The usual number of copies printed of the documents and reports of each house of Congress is 1,900, and of bills and joint resolutions 924; of the Senate Journal there are 3,194 copies and of the House Journal 3,128 copies printed. These are distributed as follows:

UNBOUND COPIES.

Where delivered.	SENATE.			HOUSE.		
	Documents.	Journal.	Bills.	Documents.	Journal.	Bills.
Document room of the House	411	265	440	396	.....	440
Office of the Clerk of the House	20	20	20	149	149	308
Sergeant-at-Arms of the Senate	243	.....	244	190	.....	134
Office of the Secretary of the Senate	6	6	15	6	.....	8
Folding-room of the Senate	190	115	170	.....	.....	.....
Department of State	30	30	15	30	30	15
Department of the Interior	.....	4	.....	.....	4	.....
War Department	.....	11	.....	.....	11	.....
Navy Department	.....	3	.....	.....	3	.....
Office of the Public Printer	4	4	4	4	4	4
File-copies	36	10	16	31	10	15
Total	940	468	924	806	211	924

BOUND COPIES.

Where delivered.	SENATE.		HOUSE.	
	Documents.	Journal.	Documents.	Journal.
Secretary of the Senate	.....	150	.....	150
Senate document-room	114	180	114	114
House document-room	313	313	416	416
Senate folding-room	43	43	.....	.....
Department of State	10	10	10	10
Department of the Interior	420	1,970	470	2,020
Clerk of the House of Representatives for governors of States	.....	.....	.....	123
Library of Congress	52	52	52	52
Library of the House of Representatives	7	7	30	30
Library of the Court of Claims	.....	.....	2	2
Office of the Public Printer	1	1	.....	.....
Total	960	2,726	1,094	2,917

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 63.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 8, 1886.—Ordered to be printed.

Mr. PLUMB submitted the following

RESOLUTION:

Whereas in reply to a resolution passed by the Senate February 29, 1884, inquiring as to the amount of wheat, corn, rye, and cotton produced and consumed in, imported into, and exported from the different countries with which this country holds commercial intercourse, &c., under date of April 21, 1884, the Secretary of State said:

Whether the present depressed condition of the wheat trade of Europe is occasioned by the several countries drawing upon their reserve stock for local economic reasons or to affect prices or legislation or public opinion, or for some other cause, cannot be asserted with certainty, but this important fact remains that the calculations and estimates herewith submitted prove, as far as statistics can prove under the circumstances, that the stock of wheat on hand in Europe at the close of 1883 did not materially differ from the stock on hand at the close of the previous year; that the wants of Europe are as imperative and as great as they were in 1883, and that the demands upon the United States should naturally be as great, at least, as they were in 1883. How long Europe may or can draw upon her reserve stock or what the exact considerations are which control the several countries in this regard, especially the United Kingdom—which may be said to regulate the wheat markets of the world—time alone can develop.

The most liberal allowance for the wheat output necessary to the world's consumption shows that the United States should be drawn upon during the present year for 188,000,000 bushels, in round numbers, against 187,000,000 bushels from all other wheat-growing countries. It thus appears that the United States supplies one-half of all the foreign wheat consumed by the several countries, and that, instead of being controlled by, we should be able to control foreign markets.

And whereas said depression still continues: Therefore,

Resolved, That said Secretary be, and he is hereby, requested to report to the Senate, at his earliest convenience, the amount in bushels of said cereals, respectively, and in pounds of cotton produced and consumed in, imported into, and exported from each of said countries during the years 1884 and 1885, as compared with like amounts during the three years preceding said dates.

The surplus amount of said products now on hand in foreign countries to meet usual demands until September 1, 1886, the amount likely to be required by importing countries before said date, with the average acreage of wheat now in the ground in foreign countries for the crop of 1886, each in detail.

Also, whether later advices confirm the figures and opinions contained in said report, and whether the causes therein referred to, as reprinted in this resolution, or increased production, or diminished consumption of food and clothing by the people, or decrease in population, or lack of money to employ labor and handle property, or, so far as his official information extends, what are the reasons which cause the continued unprecedented depression in prices for said products in this country and throughout the world.

Calendar No. 167.

49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 64.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 8, 1886.—Ordered to be printed.

Mr. VOORHEES, from the Committee on the Library, reported the following

RESOLUTION:

Resolved, That marble busts of those who have been Vice-Presidents of the United States shall be placed in the vacant niches of the Senate Chamber; that the Architect of the Capitol is authorized, subject to the advice and approval of the Senate Committee on the Library, to carry into execution the object of this resolution, and the expenses incurred in doing so shall be paid out of the contingent fund of the Senate.

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Calendar No. 168.

49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 65.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 8, 1886.—Ordered to be printed.

Mr. EUSTIS submitted the following

RESOLUTION:

Resolved, That the Committee on Finance be, and are hereby, instructed to inquire: First. Whether it has been the custom for the assistant treasurer at New Orleans to receive deposits of standard silver dollars from shippers of said coin and to issue to their correspondents at New Orleans receipts subject to count, and to issue silver certificates after the count of said dollars so deposited has been made; and whether said custom, if it has prevailed, has been changed by the instructions of the Treasurer of the United States and the reasons therefor; also, whether the said custom is now in force as regards any subtreasury of the United States. Second. Whether there has been, and is now, an adequate clerical force at the subtreasury at New Orleans to perform the duties of that office, so that holders desiring to deposit standard silver dollars, under the authority of law, may deposit them and receive therefor certificates without delay, and if such clerical force is insufficient, to report to the Senate what increase of said force should be made to secure a prompt execution of the law. That said committee are hereby authorized to send for persons and papers.

Calendar No. 168.

49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. 65. Part 2.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 8, 1886.—Ordered to be printed.

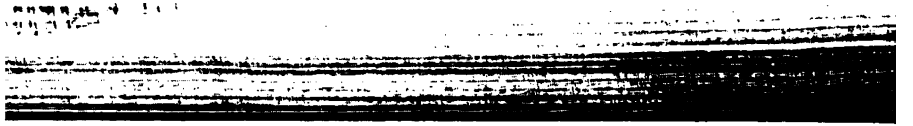
Mr. EUSTIS submitted the following

RESOLUTION:

Resolved, That the Committee on Finance be, and are hereby, instructed to inquire: (1) Whether it has been the custom for the assistant treasurer at New Orleans to receive deposits of standard silver dollars from shippers of said coin and to issue to their correspondents at New Orleans receipts subject to count, and to issue silver certificates after the count of said dollars so deposited has been made; and whether said custom, if it has prevailed, has been changed by the instructions of the Treasurer of the United States and the reasons therefor; also, whether the said custom is now in force as regards any subtreasury of the United States. (2) Whether there has been, and is now, an adequate clerical force at the subtreasury at New Orleans to perform the duties of that office, so that holders desiring to deposit standard silver dollars, under the authority of law, may deposit them and receive therefor certificates without delay, and if such clerical force is insufficient, to report to the Senate what increase of said force should be made to secure a prompt execution of the law. That said committee are hereby authorized to send for persons and papers.

AMENDMENT INTENDED TO BE PROPOSED BY MR. TELLER.

The committee also inquire of and concerning the alleged defalcation in the subtreasury at New Orleans mentioned in the telegram from N. C. Jordan, Treasurer, addressed to Senator Call, and presented by him to the Senate on the 9th instant, and whether such defalcation was in anywise connected with the exchange of silver dollars for silver certificates.



TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 66.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1886.—Ordered to be printed.

Mr. LOGAN presented the following

etter of the Secretary of War, to accompany his proposed amendment to bill S. 1302, authorizing the appointment of an Assistant Secretary of the Navy, and fixing the salary of the same, and for other purposes.

WAR DEPARTMENT,
Washington City, February 3, 1886.

SIR: I have the honor to invite your attention to the remarks on page 9 of the Annual Report of the Secretary of War for 1885 (copy inlosed), in relation to the appointment of an Assistant Secretary of Var, and also to an estimate for the salary of such assistant contained the Book of Estimates for 1886–'87, page 42.

Upon further consideration I believe that $5,000 per annum would nearer a proper compensation for the duties of the officer than the nount stated in the estimate. I accordingly inclose a draft of a bill authorize the appointment recommended, which it is hoped will reive the early and favorable consideration of your committee.

Very respectfully, your obedient servant,

WM. C. ENDICOTT,
Secretary of War.

Hon. E. S. BRAGG,
Chairman Committee on Military Affairs,
House of Representatives.

P. S.—I intended to speak to you about this in our interview this orning, but in the pressure of other matters it escaped me.

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 67.

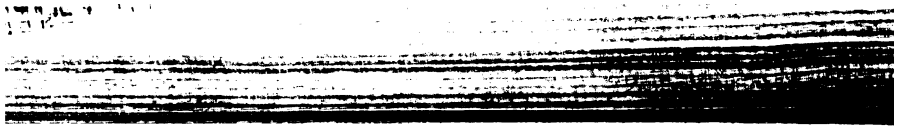
IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1886.—Ordered to be printed.

Mr. RIDDLEBERGER submitted the following

RESOLUTION:

Resolved, That the Committee on Public Buildings and Grounds be requested to report to the Senate the aggregate amount of money proposed to be appropriated by the bills reported from that committee up to, and including this day; also, the number of buildings and cost of each, and the States in which they are to be located; also, the population of the cities or towns in which such buildings are to be erected, and the purpose for which each building is to be used.



49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 68.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1886.—Referred to the Committee on Foreign Relations and ordered to be printed.

GENERAL ACT OF THE CONFERENCE OF BERLIN.

In the name of Almighty God:

The President of the United States of America, His Majesty the Emperor of Germany, King of Prussia, His Majesty the Emperor of Austria, King of Bohemia etc, and Apostolic King of Hungary, His Majesty the King of the Belgians, His Majesty the King of Denmark, His Majesty the King of Spain, the President of the French Republic, Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of the Indies, His Majesty the King of Italy, His Majesty the King of the Netherlands, Grand Duke of Luxembourg, His Majesty the King of Portugal and of the Algarves, etc. etc. etc. His Majesty the Emperor of all the Russias, His Majesty the King of Sweden and Norway etc. etc., and His Majesty the Emperor of the Ottomans,

Wishing to regulate in a spirit of good mutual understanding the conditions most favorable to the development of commerce and of civilization in certain regions of Africa, and to assure to all peoples the advantages of free navigation upon the two principal African rivers which empty into the Atlantic ocean; desirous on the other hand to prevent misunderstandings and contentions to which the taking of new possessions on the coast of Africa may in the future give rise, and at the same time preoccupied with the means of increasing the moral and material well being of the indigenous populations, have resolved, upon the invitation which has been addressed to them by the Imperial Government of Germany in accord with the Government of the French Republic, to assemble for this object a Conference at Berlin and have named for their Plenipotentiaries, as follows:

The President of the United States of America:

Mr. John A. Kasson, Envoy Extraordinary and Minister Plenipotentiary of the United States near His Majesty the Emperor of Germany, King of Prussia, and

Mr. Henry S. Sanford, formerly Minister;

His Majesty the Emperor of Germany, King of Prussia:

Othon, Prince de Bismarck, His President of the Council of Ministers of Prussia, Chancellor of the Empire,

Paul, Count de Hatzfeldt, His Minister of State and Secretary of State of the Department of Foreign Affairs,

August Busch, His Actual Privy Councillor of Legation and Under Secretary of State in the Department of Foreign Affairs, and

Henry de Kusserow, His Privy Councillor of Legation in the Department of Foreign Affairs;

His Majesty the Emperor of Austria, King of Bohemia etc. and Apostolic King of Hungary:

Emeric, Count Szechenyi, de Sarvari Felso-Videk, Chamberlain and Actual Privy Councillor, His Ambassador Extraordinary and Plenipotentiary near His Majesty the Emperor of Germany, King of Prussia;

His Majesty the King of the Belgians:

Gabriel, August, Count van der Straten Ponthoz, His Envoy Extraordinary and Minister Plenipotentiary near His Majesty the Emperor of Germany, King of Prussia, and

Auguste, Baron Lambermont, Minister of State, His Envoy Extraordinary and Minister Plenipotentiary;

His Majesty the King of Denmark:

Mr. Emile de Vind, Chamberlain, His Envoy Extraordinary and Minister Plenipotentiary near His Majesty the Emperor of Germany, King of Prussia;

His Majesty the King of Spain:

Don Francisco Merry y Colom, Count de Benomar, His Envoy Extraordinary and Minister Plenipotentiary near His Majesty the Emperor of Germany, King of Prussia;

The President of the French Republic:

Alphonse, Baron de Courcel, Ambassador Extraordinary and Plenipotentiary of France near His Majesty the Emperor of Germany, King of Prussia;

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of the Indies:

Sir Edward, Baldwin Malet, Her Ambassador Extraordinary and Plenipotentiary near His Majesty the Emperor of Germany, King of Prussia;

His Majesty the King of Italy:

Edward, Count de Launay, His Ambassador Extraordinary and Plenipotentiary near His Majesty the Emperor of Germany, King of Prussia;

His Majesty the King of the Netherlands, Grand Duke of Luxembourg etc:

Frederick, Philip, Jonkheer van der Hoeven, His Envoy Extraordinary and Minister Plenipotentiary near His Majesty the Emperor of Germany, King of Prussia;

His Majesty the King of Portugal and of the Algarves etc. etc. etc.:

da Serra Gomes, Marqis de Penafiel, Peer of the Kingdom, His Envoy Extraordinary and Minister Plenipotentiary near His Majesty the Emperor of Germany, King of Prussia, and

Mr. Antoine de Serpa Pimentel, Councillor of State and Peer of the Kingdom;

His Majesty the Emperor of all the Russias:

Pierre, Count Kapnist, Privy Councillor, His Envoy Extraordinary and Minister Plenipotentiary near His Majesty the King of the Netherlands;

His Majesty the King of Sweden and Norway etc. etc.:

Gillis, Baron Bildt, Lieutenant General, His Envoy Extraordinary and Minister Plenipotentiary near His Majesty the Emperor of Germany, King of Prussia;

His Majesty the Emporer of the Ottomans:

Mehemed Said Pacha, Vizier and High Dignitary, His Ambassador Extraordinary and Plenipotentiary near His Majesty the Emperor of Germany, King of Prussia;

Who, furnished with full powers which have been found in good and due form, have successively discussed and adopted:

1st. A Declaration relative to the liberty of commerce in the basin of the Congo, embouchures and neighboring countries, with certain dispositions connected therewith;

2nd. A Declaration concerning the slave trade and the operations which on land or sea furnish slaves for the trade;

3rd. A Declaration relative to the neutrality of the territory comprised in the conventional basin of the Congo;

4th. An Act of navigation of the Congo, which while taking note of local circumstances, extends to this river, to its affluents and to the waters which are assimilated to them, the general principles announced in Articles 108 to 116 of the final Act of the Congress of Vienna and designed to regulate between the Powers signatory to said Act, the free navigation of navigable water courses which separate or traverse several States, principles since then conventionally applied to certain rivers of Europe and of America, and notably to the Danube, with the modifications provided by the treaties of Paris of 1856, of Berlin of 1878, and of London of 1871 and of 1883;

5th. An Act of navigation of the Niger which, while equally taking note of local circumstances, extends to this river and to its affluents the same principles inscribed in Articles 108 to 116 of the final Act of the Congress of Vienna;

6th. A Declaration introducing into international relations certain uniform rules relative to the occupations which may take place in the future upon the coasts of the African Continent;

And having judged that these different documents might be usefully coördinated in a single instrument, have collected them into a general Act composed of the following articles.

CHAPTER I.

DECLARATION RELATIVE TO THE LIBERTY OF COMMERCE IN THE BASIN OF THE CONGO, ITS EMBOUCHURES AND NEIGHBORING COUNTRY, AND DISPOSITIONS CONNECTED THEREWITH.

ARTICLE 1.

The commerce of all nations shall enjoy complete liberty:

1st. In all the territories constituting the basin of the Congo and its affluents. This basin is defined by the crests of the contiguous basins, to wit: notably the basins of the Niari, of the Ogove, of the Schari and of the Nile, on the North; by the line of Eastern water shed of the affluents of lake Tanganyka on the East; by the crests of the basins of the Zambeze and of the Loge, on the South. It embraces, consequently,

all the territories drained by the Congo and its affluents, including the lake Tanganyka and its Eastern tributaries.

2nd. In the maritime zone extending along the Atlantic ocean from the parallel of 2° 30′ Southern latitude to the mouth of the Loge.

The Northern boundary shall follow the parallel of 2° 30′ from the coast to the point where it strikes the geographical basin of the Congo, avoiding the basin of the Ogove to which the stipulations of the present Act do not apply.

The Southern boundary shall follow the course of the Loge up to the source of this river and shall be directed thence Eastward to the junction of the geographical basin of the Congo.

3rd. In the zone prolonged to the East of the Congo basin as it is above described, as far as the Indian ocean, from the fifth degree of North latitude to the mouth of the Zambeze on the South; from this point the line of demarcation shall follow the Zambeze to a point five miles above the confluence of the Shire and shall continue by the line of water shed separating the waters which flow towards the lake Nyassa from the waters tributary to the Zambeze to rejoin finally the line dividing the waters of the Zambeze and of the Congo.

It is expressly understood that in extending to this Eastern zone the principle of commercial liberty the Powers represented at the Conference only engage for themselves and that this principle shall apply to territories actually belonging to any independent and sovereign State only in so far as it shall give its consent thereto. The Powers agree to employ their good offices with the governments established upon the African littoral of the Indian ocean in order to obtain such consent and, in every case, to assure to the transit of all nations the most favorable conditions.

ARTICLE 2.

All flags, without distinction of nationality, shall have free access to all the littoral of the territories above enumerated, to the rivers which there empty into the sea, to all the waters of the Congo and its affluents including the lakes, to all the ports situated upon the borders of these waters, as well as to all the canals which may in the future be excavated with the object of connecting together the water courses or lakes comprised in the in the whole extent of the territories described in Article 1. They may undertake every kind of transport and exercise the coastwise navigation by sea and river as also small boat transportation upon the same footing as the allegiants.

ARTICLE 3.

Merchandise of every origin imported into these territories, under whatever flag it may be, by route of sea or river or land, shall have to discharge no other taxes than those which may be collected as an equitable compensation for expenses useful to commerce and which, under this head, must be equally borne by the allegiants and by strangers of every nationality.

All differential treatment is prohibited in respect to ships as well as merchandise.

ARTICLE 4.

Merchandise imported into these territories shall remain free from entrance and transit dues.

The Powers reserve to themselves to decide, at the end of a period of twenty years, whether freedom of entry shall or shall not be maintained.

ARTICLE 5.

Every Power which exercises or shall exercise rights of sovereignty ı the territories under consideration shall not concede there either ıonopoly or privilege of any kind in commercial matters.

Strangers shall enjoy there without distinction, for the protection of ıeir persons and their goods, the acquisition and transmission of their ıovable and immovable property and for the exercise of the professions, ıe same treatment and the same rights as the allegiants.

ARTICLE 6.

EPOSITIONS RELATIVE TO THE PROTECTION OF THE NATIVES, OF MISSIONARIES AND OF TRAVELERS, AND ALSO TO RELIGIOUS LIBERTY.

All Powers exercising rights of sovereignty or an influence in the aid territories engage themselves to watch over the conservation of he indigenous populations and the amelioration of their moral and ıaterial conditions of existence and to strive for the suppression of avery and especially of the negro slave trade; they shall protect and ,vor without distinction of nationality or of worship, all the institutions ıd enterprises religious, scientific or charitable, created and organized r these objects or tending to instruct the natives and to make them ıderstand and appreciate the advantages of civilization.

The christian missionaries, the savants, the explorers, their escorts, ·operties and collections shall be equally the object of special protec- ›n.

Liberty of conscience and religious toleration are expressly guaranteed the natives as well as to allegiants and to strangers.

The free and public exercise of all forms of worship, the right to erect ligious edifices and to organize missions belonging to all forms of ›rship shall not be subjected to any restriction or hindrance.

ARTICLE 7.

POSTAL REGIME.

The Convention of the universal postal Union revised at Paris June t. 1878 shall be applied to the conventional basin of the Congo.

The Powers who there exercise or shall exercise rights of sovereignty of protectorate engage themselves to take, so soon as circumstances all permit it, measures necessary for the execution of the preceding sposition.

ARTICLE 8.

GHT OF SUPERVISION ATTRIBUTED TO THE INTERNATIONAL COMMISSION OF NAVIGATION OF THE CONGO.

In all parts of the territory within the purview of the present Decla- ,tion where no Power may exercise rights of sovereignty or of protec- ›rate, the International Commission of navigation of the Congo, in- ituted by virtue of Article 17, shall be charged to supervise the ›plication of the principles proclaimed and established by this Decla- ,tion.

In all cases where difficulties relative to the application of the prin- ples established by the present Declaration may happen to arise, the ›vernments interested may agree to appeal to the good offices of the ıternational Commission by deferring to it the examination of the facts hich shall have given occasion to those difficulties.

CHAPTER II.

DECLARATION CONCERNING THE SLAVE TRADE.

ARTICLE 9.

Conformably to the principles of the law of nations, as they are recognized by the signatory Powers, the slave trade being interdicted, and as the operations which, by land or sea, furnish slaves to the trade ought to be equally considered as interdicted, the Powers who exercise or shall exercise rights of sovereignty or an influence in the territories forming the conventional basin of the Congo declare that these territories shall not serve either for a market or way of transit for the trade in slaves of any race whatever. Each of these Powers engages itself to employ all the means in its power to put an end to this commerce and to punish those who are occupied in it.

CHAPTER III.

DECLARATION RELATIVE TO THE NEUTRALITY OF THE TERRITORIES COMPRISED IN THE CONVENTIONAL BASIN OF THE CONGO.

ARTICLE 10.

In order to give a new guarantee of security to commerce and to industry and to favor, by the maintenance of peace, the development of civilization in the countries mentioned in Article 1 and placed under the regime of commercial liberty, the high signatory parties of the present Act and those who shall subsequently adhere to it engage themselves to respect the neutrality of the territories or parts of territories depending on said countries, including therein the territorial waters, so long as the Powers who exercise or shall exercise rights of sovereignty or protectorate over these territories, making use of the option to proclaim themselves neutrals, shall fulfill the duties which belong to neutrality.

ARTICLE 11.

In the case where a Power exercising rights of sovereignty or of protectorate in the countries mentioned in Article 1 and placed under the regime of commercial liberty may be involved in a war, the high signatory parties of the Present Act and those who shall adhere to it subsequently engage themselves to lend their good offices to the end that the territories belonging to this Power and comprised in the conventional zone of commercial liberty may be, with the common consent of this Power and of the other party or parties belligerent, placed for the duration of the war under the regime of neutrality and considered as belonging to a non-belligerent State; the belligerent parties may renounce, thenceforth, the extension of hostilities to the territories thus neutralised, as also their use as a base for the operations of war.

ARTICLE 12.

In case a serious dissension, springing up on the subject or within the limits of the territories mentioned in Article 1 and placed under the regime of commercial liberty should happen to arise between the

signatory Powers of the present Act or the Powers which may subsequently adhere to it, these Powers engage themselves, before appealing to arms, to have recourse to the mediation of one or more friendly Powers.

In the same case the same powers reserve to themselves the optional recourse to the procedure of arbitration.

CHAPTER IV.

ACT OF NAVIGATION OF THE CONGO.

ARTICLE 13.

The navigation of the Congo, without exception of any of the branches or issues of this river, is and shall remain entirely free for merchant vessels, loaded or in ballast, of all nations, as well for the transport of merchandise as for that of travelers. It must conform itself to the dispositions of the present navigation Act and to the regulations to be established in the execution of the same Act.

In the exercise of this navigation the subjects and the flags of all the nations shall be treated, in all respects, upon the footing of a perfect equality, as well for the direct navigation from the open sea toward the interior ports of the Congo, and vice versa, as for the great and small coastwise navigation and also for the small-boat transportation throughout the extent of this river.

Consequently, throughout the extent and at the mouths of the Congo, no distinction shall be made between the subjects of riparian and non-riparian States, and no exclusive privilege of navigation shall be conceded, either to societies or corporations of any kind or to private persons.

These dispositions are recognized by the signatory powers as forming henceforth a part of public international law.

ARTICLE 14.

The navigation of the Congo cannot be subjected to any hindrance or charge which may not be expressly stipulated in the present Act. It shall not be burdened with any obligation of sealed voyages, ports of stoppage, of depot, of breaking bulk, or of compulsory interruption.

In all the extent of the Congo, ships and merchandise passing along the river shall not be subjected to any transit dues, whatever may be their origin or their destination.

There shall not be established any maritime or river transit tax based upon the simple fact of navigation, nor any dues upon the merchandise which is found on board the ships. Only taxes or dues can be collected which shall have the character of compensation for services rendered to navigation itself, namely:

1st. Port taxes for the actual use of certain local establishments such as quays, storehouses, etc. etc.

The tariff of these taxes shall be calculated upon the expenses of construction and maintenance of said local establishments, and its application shall be made without regard to the origin of ships or to their cargo.

2nd. Certain dues of pilotage upon the sections of the river where it may appear necessary to create stations of commissioned pilots.

The tariff of these dues shall be fixed and proportioned to the service rendered.

3rd. Certain dues designed to cover the technical and administrative expenses, made in the general interest of navigation, including therein dues for lighthouses, lights and buoys.

Dues of this last category shall be based upon the tonnage of vessels, as it appears from the papers on board, and conformably to the rules adopted upon the lower Danube.

The tariffs according to which the taxes and dues, enumerated in the three preceding paragraphs, shall be collected, shall carry with them no differential treatment and must be officially published in each port.

The Powers reserve to themselves to examine, at the end of a period of five years, whether there is occasion to revise, by common accord, the tariffs above mentioned.

ARTICLE 15.

The affluents of the Congo shall in all respects be submitted to the same regime as the river of which they are tributaries.

The same regime shall be applied to the rivers and streams as also to the lakes and canals of the territories defined by Article 1, paragraphs 2 and 3.

The attributions of the International Commission of the Congo however shall not extend over the said rivers, streams, lakes and canals, except with the assent of the States under the sovereignty of which they are placed. It is well understood also that for the territories mentioned in Article 1, paragraph 3, the consent of the sovereign States on which these territories depend, remain reserved.

ARTICLE 16.

The routes, railroads or lateral canals which may be established for the special object of supplementing the innavigability of imperfections of the river way over certain sections of the course of the Congo, of its affluents and of the other water courses which are assimilated to them by Article 15 shall be considered, in their quality of means of communication, as dependencies of this river and shall be equally open to the traffic of all nations.

In like manner as upon the river, upon these routes, raliroads and canals transit taxes can only be collected which are calculated upon the expenses of construction, of maintenance and of administration, and upon the profits due to the constructors.

As to the rates of these transit taxes strangers and allegiants of the respective territories shall be treated upon the footing of perfect equality.

ARTICLE 17.

There is instituted an International Commission charged to assure the execution of the dispositions of the present navigation Act.

The signatory Powers of this Act, as well as those who shall adhere to it hereafter, can, at all times, have themselves represented in the said Commission, each by one delegate. No delegate can dispose of more than one vote even in the case where he may represent several governments.

This delegate shall be directly compensated by his government.

The pay and allowances of the agents and employés of the Internaional Commission shall be charged upon the product of the dues colected conformably to Article 14, paragraphs 2 and 3.

The figures of the said pay and allowances as well as the number, he grade and the attributions of the agents and employés, shall be inscribed in the report which shall be addressed each year to the governments represented in the International Commission.

ARTICLE 18.

The members of the International Commission as well as the agents amed by it, are invested with the privilege of inviolability in the exerise of their functions. The same guarantee shall extend to the offices, ureaus and archives of the Commission.

ARTICLE 19.

The International Commission of navigation of the Congo shall contitute itself so soon as five of the signatory Powers of the present eneral Act shall have named their delegates. While awaiting the onstitution of the Commission, the nomination of the delegate shall be otified to the Government of the German Empire, by whose care the ecessary steps shall be taken to provoke the assemblage of the Comission.

The Commission shall immediately elaborate regulations of navigaon, of river police, of pilotage and of quarantine.

These regulations, as well as the tariffs to be established by the Comission, before being put in force, shall be submitted to the approbation the Powers represented in the Commission. The Powers interested all make known their opinion with the least delay possible.

Infractions of these regulations shall be repressed by the agents of the ternational Commission, where it shall exercise direct its authority, d elsewhere by the riparian Power.

In case of an abuse of power or of an injustice on the part of an agent employé of the International Commission, the individual who shall gard himself as injured in his person or in his rights may address mself to the consular agent of his nation. The latter shall examine e complaint; if he finds it prima facie reasonable, he shall have the ght to present it to the Commission. Upon his initiative, the Commisn represented by at least three of its members, shall join itself to him make an investigation touching the conduct of its agent or employé. If e consular agent considers the decision of the Commission as giving rise objections of right, he shall make a report of it to his government hich may have recourse to the Powers represented in the Commission d invite them to come to agreement upon the instructions to be given the Commission.

ARTICLE 20.

The International Commission of the Congo, charged by the terms of rticle 17 to assure the execution of the present Act of navigation shall ve notably in its attributions:

1. The designation of the works proper to assure the navigability of the Congo according to the needs of international commerce.

Upon the sections of the river where no Power shall exercise the rights of sovereignty, the International Commission shall itself take the necessary measures to assure the navigability of the river.

Upon the sections of the river occupied by a sovereign Power, the International Commission shall come to an understanding with the riparian authority.

2. The settlement of the tariff of pilotage and that of the general tariff of navigation dues, provided in the 2nd. and 3rd. paragraphs of Article 14.

The tariff mentioned in the 1st. paragraph of Article 14 shall be settled by the territorial authority, within the limits provided in said Article.

The collection of these different duties shall be made by the care of the International or territorial authority for the account of which they are established.

3. The administration of the revenues proceeding from the application of the above paragraph 2.

4. The supervision of the quarantine establishment established in virtue of Article 24.

5. The nomination of the agents belonging to the general service of navigation and that of its own employés.

The institution of sub-inspectors shall belong to the territorial authority upon the sections occupied by a Power, and to the International Commission upon the other sections of the river.

The riparian Power shall notify to the International Commission the nomination of sub-inspectors whom it shall have instituted, and this Power shall charge itself with their pay.

In the exercise of these attributions as they are above defined and limited, the International Commission shall not depend upon the territorial authority.

ARTICLE 21.

In the accomplishment of its task, the International Commission may have recourse, at need, to the war vessels of the signatory Powers of this Act and of those who shall accede to it in the future, subject to every reserve of the instructions which may be given to the commandants of these vessels by their respective governments.

ARTICLE 22.

The vessels of war of the signatory Powers of the present Act which enter the Congo are exempt from the payment of the navigation dues provided in paragraph 3 of Article 14; but they shall pay the eventual pilot dues as well as port dues, unless their intervention may have been called for by the International Commission or its agents according to the terms of the preceding Article.

ARTICLE 23.

For the object of providing for the technical and administrative expenses with which they are charged, the International Commission instituted by Article 17 may negotiate in its own name loans exclusively based upon the revenues attributed to the said Commission.

The decisions of the Commission tending to the conclusion of a loan must be taken by a majority vote of two-thirds. It is understood that the governments represented in the Commission cannot, in any case, be considered as assuming any guarantee or contracting any engagement or responsibility in respect to said loans, unless by special conventions concluded by them to this effect.

The product of the dues specified in the 3rd. paragraph of Article 14 shall be by priority assigned to the service of the interest and to the extinguishment of said loans, according to the agreements entered into with the lenders.

ARTICLE 24.

At the embouchures of the Congo, there shall be founded, either by the initiative of the riparian Powers, or by the intervention of the International Commission, a quarantine establishment which shall exercise control over vessels as well on arrival as on departure.

It shall be decided later, by the Powers, whether and under what conditions a sanitary control shall be exercised over vessels in the course of the navigation of the river.

ARTICLE 25.

The dispositions of the present Act of navigation shall remain in force in time of war. Consequently, the navigation of all nations, neutral or belligerent, shall be free, at all times, for the uses of commerce upon the Congo, its branches, its affluents and its mouths, as also upon the territorial sea opposite the mouths of this river.

Trade shall remain equally free, notwithstanding the state of war, upon the routes, railroads, lakes and canals mentioned in Articles 15 and 16.

There shall be no exception to this principle except in what relates to the transport of objects destined to a belligerent and considered, by virtue of the law of nations, as articles contraband of war.

All the works and establishments created in execution of the present act, notably the bureaus of collection and their coffers, likewise the personnel attached in a permanent manner to the service of these establishments, shall be placed under the regime of neutrality and, under this head, shall be respected and protected by the belligerents.

CHAPTER 5.

ACT OF NAVIGATION OF THE NIGER.

ARTICLE 26.

The navigation of the Niger, without exception of any of the branches or issues of this river, is and shall remain entirely free for the merchant ships, laden or in ballast, of all nations, as well as for the transport of merchandise as for that of travelers. It must conform to the dispositions of the present navigation Act and to the regulations to be established in execution of the same Act.

In the exercise of this navigation, the subjects and the flags of all nations, shall be treated, in all respects, upon the footing of a perfect equality, as well for the direct navigation from the open sea toward the interior ports of the Niger, and vice versa, as for the great and small coastwise navigation, and also for the small boat transportation throughout the extent of this river.

Consequently, upon all the extent and at the mouths of the Niger, there shall be no distinction made between the subjects of the riparian and non-riparian States, and no exclusive privilege of navigation shall be conceded, either to societies or corporations of any kind, or to private persons.

These dispositions are recognized by the signatory Powers as forming henceforth part of international public law.

ARTICLE 27.

The navigation of the Niger cannot be subjected to any hindrance or charge based solely upon the fact of navigation.

It shall not be subjected to any obligation of scaled voyages, ports of stoppage, of depot, of breaking bulk, or compulsory interruption.

Upon all the extent of the Niger, vessels and merchandise passing upon the river shall not be subjected to any transit dues, whatever may be their origin or their destination.

There shall not be established any maritime or river transit tax, based upon the simple fact of navigation, nor any duty upon the merchandise which is found on board the vessels. There can be collected only the tax or duty which shall have the character of compensation for service rendered to navigation itself. The tariffs of these taxes or duties shall carry with them no differential treatment.

ARTICLE 28.

The affluents of the Niger shall be in all respects submitted to the same regime as the river of which they are tributaries.

ARTICLE 29.

The routes, railroads or lateral canals which may be established with the special object of supplementing the innavigability or imperfections of the river way upon certain sections of the course of the Niger, of its affluents, branches and issues shall be considered, in their quality of means of communication, as dependencies of this river and shall be equally open to the traffic of all nations.

In like manner as upon the river, there shall be collected upon these routes, railroads and canals, only transit taxes calculated upon the expenses of construction, of maintenance and of administration, and upon the profits due to the constructors.

As to the rates of these transit taxes, strangers and allegiants of the respective territories shall be treated upon the footing of perfect equality.

ARTICLE 30.

Great Britain engages itself to apply the principles of the liberty of navigation announced in Articles 26, 27, 28, 29, in so far as the waters of the Niger, of its affluents, branches and issues, are or shall be under its sovereignty or protectorate.

The regulations which it shall establish for the safety and control of navigation shall be conceived in a manner to facilitate so far as possible the circulation of merchant vessels.

It is understood that nothing in the engagements thus taken can be interpreted as preventing or able to prevent Great Britain from making such regulations of navigation whatever they may be, as may not be contrary to the spirit of these engagements.

Great Britain engages itself to protect the foreign traders of all nations carrying on commerce in the portions of the course of the Niger which are or shall be under its sovereignty or protectorate, as if they were its own subjects, provided always that these traders conform to the regulations which are or shall be established in virtue of what precedes.

ARTICLE 31.

France accepts under the same reserve and in identical terms the ›ligations established in the preceding Article, in so far as the waters the Niger, of its affluents, branches and issues are or shall be under ı sovereignty or its protectorate.

ARTICLE 32.

Each of the other signatory Powers engages itself likewise, in case it ıould exercise in the future rights of sovereignty or protectorate upon ıy part of the waters of the Niger, of its affluents, branches and issues.

ARTICLE 33.

The dispositions of the present Act of navigation shall remain in force time of war. Consequently, the navigation of all nations, neutral or ılligerent, shall be free at all times for the uses of commerce upon the iger, its branches and affluents, its embouchures and issues, as also upon e territorial sea opposite to the embouchures and issues of this river. Trade shall remain equally free, notwithstanding the state of war, ›on the routes, railroads and canals mentioned it Article 29.

There shall be no exception to this principle except in what concerns ıe transport of objects destined to a belligerent and considered, by rtue of the law of nations, as articles contraband of war.

CHAPTER VI.

ECLARATION RELATIVE TO THE CONDITIONS ESSENTIAL TO BE FULFILLED IN ORDER THAT NEW OCCUPATIONS UPON THE COASTS OF THE AFRICAN CONTINENT MAY BE CONSIDERED AS EFFECTIVE.

ARTICLE 34.

The Power which henceforth shall take possession of a territory upon e coast of the African continent situated outside of its present posses- ›ns, or which, not having had such possessions hitherto, shall come to quire them, and likewise, the Power which shall assume a protectorate ere, shall accompany the respective act with a notification addressed the other signatory Powers of the present Act, in order to put them a condition to make available, if there be occasion for it, their rec- mations.

ARTICLE 35.

The signatory Powers of the present Act recognise the obligation to sure, in the territories occupied by them, upon the coasts of the Afri- ›n Continent, the existence of an authority sufficient to cause acquired ghts to be respected and, the case occurring, the liberty of commerce ıd of transit in the conditions upon which it may be stipulated.

CHAPTER VII.

GENERAL DISPOSITIONS.

ARTICLE 36.

The signatory Powers of the present general Act reserve to them- ves to introduce into it later and by common accord the modifica- ›ns or ameliorations the utility of which may be demonstrated by perience.

ARTICLE 37.

The Powers who shall not have signed the present general Act may adhere to its dispositions by a separate Act.

The adhesion of each Power is notified, in a diplomatic way, to the Government of the German Empire, and by the latter to all the signatory or adhering States.

It carries by full right the acceptance of all the obligations and admission to all the advantages stipulated by the present general Act.

ARTICLE 38.

The present general Act shall be ratified within a delay which shall be the shortest possible and which, in any case, shall not exceed one year.

It shall enter into force for each Power to begin from the date when it shall have ratified it.

Meanwhile the signatory Powers of the present general Act bind themselves to adopt no measure which may be contrary to the dispositions of the said Act.

Each power shall address its ratification to the Government of the German Empire, by whose care notice shall be given to all the other signatory Powers of the present general Act.

The ratifications of all the Powers shall remain deposited in the archives of the Government of the German Empire. When all the ratifications shall have been produced, there shall be drawn up an act of deposit in a protocol which shall be signed by the representatives of all the Powers having taken part in the Conference of Berlin and of which a certified copy shall be addressed to all these Powers.

In faith of which, the respective Plenipotentiaries have signed the present general Act and have affixed thereto their seal.

Done at Berlin, the 26th day of the month of February one thousand eight hundred eighty five.

[L. S.]	JOHN A. KASSON.
[L. S.]	H. S. SANFORD.
[L. S.]	v. BISMARCK.
[L. S.]	BUSCH.
[L. S.]	v. KUSSEROW.
[L. S.]	SZECHENYI.
[L. S.]	Cte AUG te van der STRATEN PONTHOZ.
[L. S.]	Bn LAMBERMONT.
[L. S.]	E. VIND.
[L. S.]	Comte de BENOMAR.
[L. S.]	ALPH. de COURCEL.
[L. S.]	EDWARD B. MALET.
[L. S.]	LAUNAY.
[L. S.]	F. P. van der HOEVEN.
[L. S.]	MARQUIS de PENAFIEL.
[L. S.]	A. de SERPA PIMENTEL.
[L. S.]	Cte P. KAPNIST.
[L. S.]	GILLIS BILDT.
[L. S.]	SAÏD.

CONGRESS, } SENATE. { MIS. DOC.
t Session. } { No. 69.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1886.—Ordered to be printed.

Mr. PLUMB submitted the following

RESOLUTION:

solved, That the Secretary of the Interior be directed to inform the te as to the names and number of special agents employed by his artment for the purpose of the detection of fraud in the entries of c lands, length of time employed, respectively, compensation and ses paid to each, the number of cases sent to said special agents vestigation and report, the number of cases reported upon by each d agents, and during what period of time, the number of cases of es of public lands which have been suspended, and which under the of the Department will require to be specially investigated before finally decided.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 70.

IN THE SENATE OF THE UNITED STATES.

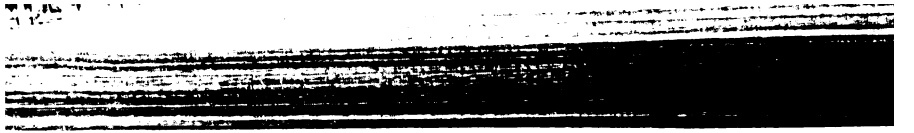
FEBRUARY 15, 1886.—Ordered to be printed.

Mr. MAHONE submitted the following

RESOLUTION:

Resolved, That the Attorney-General of the United States be, and he hereby is, directed to inform the Senate of the number of cases in which the United States were a party, or interested, pending in the circuit and district courts of the eastern district of Virginia at the terms of such courts held in the year 1884, and also in the year 1885; and that he also inform the Senate whether any, and if so, what assistant district attorneys have been appointed for that district during those years, or since, and at what rate of compensation; and that he transmit to the Senate copies of all documents and papers in the possession of the Department of Justice relating to any such appointment.

O



TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 72.

IN THE SENATE OF THE UNITED STATES.

BRUARY 15, 1886.—Referred to the Committee on the District of Columbia and ordered to be printed.

Mr. INGALLS presented the following:

THE PUBLIC SCHOOLS OF THE DISTRICT OF COLUMBIA.

emorial of the citizens' committee against the abolition of the school board and in favor of Senate bill No. 1238.

the SENATE:

When the organic act of June 11, 1878, providing a government for e District of Columbia was introduced in the House and referred to e District Committee, it contained a provision abolishing the school ard and transferring its powers and duties to the Commissioners.

Against this provision the citizens, or some of them, objected, and ereupon the House committee inserted a clause at the end of section which subsequently became a law, providing for the appointment of leteen trustees, who "shall have," so the law reads, "the powers and rform the duties in relation to the care and management of the public lools which are now authorized by law."

Over the construction of this provision of the organic act has arisen onflict of opinion between the Commissioners and the school board ich seems to require legislation for settlement.

But, aside from this conflict, and independently of what the law now arises the question of what the law ought to be. Upon this ques-n, also, there is conflict of opinion.

The Commissioners are understood to favor the abolition of the school ard as a governing body (retaining it, if at all, merely to execute such vers as they may see fit from time to time to delegate to it), and the nsfer of all its substantial powers to themselves. Their ideal or del appears to be the police department. They would prefer to gov- the schools, as they govern the police force, through a paid super-endent.

The citizens, on the other hand, or the great body of them, undoubt-y look with disfavor upon a further centralization of power in school nagement. Their recent experience of the effects of a practical ap-ation of the one-man power to school affairs in the separate divisions ot such as to encourage acquiescence in the extension of that power er the whole system. They would prefer to intrust the management he public schools to citizens selected and appointed for that especial pose, and in numbers sufficiently large to be fairly representative of h school division and of all classes of the people.

It will be seen that these two opinions or systems are wide apart. One proposes to gather up and hand over to the Commissioners all the substantial powers and duties heretofore exercised by the school board, including the power of appointing nearly six hundred teachers; the other proposes to leave these powers and duties in the hands of citizens specially selected and appointed for the purpose.

Senate bill No. 1238 is based upon the latter proposition. It leaves the financial administration of school affairs where existing law has placed it—in the hands of the Commissioners. They alone have power to determine the number and salaries of teachers and employés; to purchase sites, and build school houses, and make repairs; and to buy furniture and supplies.

It continues the Commissioners at the head of the school system by vesting in them the power of appointing, as they now have the power of removing, the members of the school board, and it guards against conflict between the Commissioners and the board by carefully prescribing and limiting the powers and duties of each.

It tends to economy in school expenditures by subjecting such expenditures to the scrutiny of a board composed of citizens who help pay the taxes. It does not authorize the board to expend money or incur debts for the support of the public schools, but does require it, or a committee of its members, to examine all accounts and bills for such purpose, and approve or disapprove the same, thereby enabling it to point out errors, and excesses, and favoritisms, which otherwise might not be brought to the attention of the Commissioners.

It tends to guard against the construction of unsuitable and badly-planned school buildings, in inconvenient, unhealthy, or otherwise objectionable localities, by fixing responsibility for these matters upon the school board, whose members are most likely to be well informed upon such subjects.

It tends to keep alive an active interest in public education on the part of parents and people, and to make them watchful for the welfare of their schools—a matter never to be lost sight of. The public school systems of the States, and of this District too, have grown up under the care and management of the people themselves, and these systems in the cities of the States have been, and are now, so far as we are informed, universally administered by committees or boards variously designated, but all elected or appointed for this exclusive purpose; and great care is taken to keep the control of public education separate and exempt from interference on the part of the political authorities. We know of no reason why a different rule should be applied here. It would be unwise, we think, to take from the people, even of the District of Columbia, the administration of their school affairs and turn it over to one man or three men, holding political office, however unexceptionable he or they may be.

But suppose the man or men happen *not* to be unexceptionable? Such a case is at least supposable. It is certainly conceivable that a man might be appointed Commissioner and might be assigned to the management of the public schools, without possessing proper qualifications for the performance of such duties; would it be wise or just legislation to subject the public schools of a great city to the hazard of the mistakes of such a man?

In conclusion it may be proper to call attention to the fact that Senate bill No. 1238, whose provisions we approve, provides for no new scheme of school management. It provisions are scarcely more than a mere codification of existing laws and usages, as approved and admin-

stered under the first board of Commissioners, of which Governor Denison was president, and under the second board of Commissioners, of which Captain Phelps was president, and under the third board of Commissioners, of which Mr. Dent was president. Under the direction of this board of Commissioners these laws and usages were formulated or codified and transmitted to Congress for enactment into statute law. The House approved the codification and passed the bill. The District Committee of the Senate also approved the codification, but with an amendment limiting appointments of superintendents to persons *recommended* by the school board.

Any suggestion, therefore, that this bill is new, or confers unusual powers upon the school board, is not well founded.

We favor its enactment because it is a bill of peace, settling the disputed construction of the present act, and preventing future disagreements between the Commissioners and the school board; and because it continues a system of school management with which we are all familiar and under which the schools have grown up and prospered; and because it imposes upon the people themselves, through a reasonably large committee, responsibility for the proper management of their own schools.

We append hereto a letter of the Commissioners, marked *Exhibit A*; and a letter of the president of the school board, marked *Exhibit B*.

Respectfully submitted.

WASHINGTON, *February 9, 1886.*

ROBERT REYBURN, M. D., *Chairman.*	JAMES C. DULIN, *Secretary.*
PETER F. BACON.	HENRY N. COPP.
A. C. RICHARDS.	W. H. A. WORMLEY.
ROBT. W. FENWICK.	J. W. TROUT.
T. A. LAMBERT.	*Pastor Meth. Prot. Church.*
JNO. A. BAKER.	C. C. MEADOR.
J. S. BROWN.	*Pastor Fifth Baptist Church.*
WM. R. WOODWARD.	W. A. BARTLETT.
THOS. B. MARCHE.	*Pastor N. Y. Ave. Pres. Church.*
E. F. FRENCH.	J. G. [illegible].
JNO. F. N. WILKINSON.	*Pastor Memorial Lutheran Church.*
THOS. P. MORGAN.	[illegible] H. [illegible].
T. H. WRIGHT.	*Pastor Calvary Baptist Church.*
SOLOMON G. BROWN.	[illegible]
M. G. EMERY.	[illegible]
J. WOLF.	*Pastor Metropolitan Meth. Church*
FEDK. DOUGLASS.	[illegible]
WM. HENRY BROWN.	*Pastor Carolina Church.*
THOS. SOMERVILLE.	[illegible]
H. S. BISCOE.	*Pastor Church of Our Father Congregational.*
C. M. MATTHEWS.	[illegible]
CHAS. E. HOWE.	[illegible]
WM. J. RHEES.	*Pastor Hebron Congregational*
S. A. H. MCKEE, M. D.	[illegible]
W. H. SMITH.	*Pastor Vesey Chapel*
GEO. WHITE.	[illegible]
J. STEPHENSON.	*Pastor Rock Congregational Church*
CHAPIN BROWN.	[illegible]
R. B. FERGUSON.	[illegible]
C. P. CULVER.	*Pastor Mount Zion Pres. Church*

So far as I understand the subject the Commissioners should have the power to appoint the trustees of the public schools under such regulations as Congress may establish. But after the trustees have been so appointed they should not be interfered with by the Commissioners in their management of the schools, but should be held directly responsible for such management to Congress and the people.

B. SUNDERLAND,
Pastor 1st Pres. Church.
RUSH R. SHIPPEN,
Pastor of All Souls' Church,
Committee.

W. A. LEONARD,
Rector of St. John's Parish.
A. F. STEELE,
Rector of St. Mark's Parish.

EXHIBIT A.

OFFICE OF THE COMMISSIONERS, DISTRICT OF COLUMBIA,
Washington, January 29, 1886.

SIR: Your favor of the 20th instant has been received and its contents noted. The bill presented by your committee has been carefully read and considered, and I am instructed to say that an answer would have been transmitted sooner, but has been delayed by the pressure of other matters.

The Commissioners are satisfied that the interests of the public schools will be much better subserved by keeping the control of those schools just where the existing law puts it than by the means provided in the bill referred to them. The act of 1878, which abolishes the Board of School Trustees, transfers all the powers and duties exercised by that board to the Commissioners, and authorizes them to employ such agents and to adopt such provisions as may be necessary to carry into execution the powers and duties so conferred. By the same act the appointment of trustees, who "are to have the powers and perform the duties in relation to the care and management of the public schools authorized by law," is confided to the Commissioners. In their letter of the 31st of December last, addressed to the Board of School Trustees, the Commissioners call attention to the provisions of the act of 1878, and give it as their opinion that the "terms care and management" have reference to the "schools" as complete institutions, fully organized and equipped with teachers, school buildings, and janitors. When the school is a complete institution the care and management of it is assigned to the trustees, under laws existing in 1878 having relation thereto, and it only remains to ascertain definitely what laws are specifically referred to by this language.

The bill presented to the Commissioners by your committee proposes to establish a board of school trustees consisting of twenty-four instead of nine, and confers enlarged powers and imposes more engrossing duties upon them than does the present law, all of which they are to perform, as under the old law, without compensation. The Commissioners do not think that a plan which thus imposes upon unpaid agents duties so numerous and so difficult, and at the same time holds them to so great responsibility, is a good one, and they think also that the plan proposed is defective in that it divides the responsibility for the proper conduct of the schools among a large number of trustees, and so continues a system, which, for several years past, has not worked successfully. As to the number of trustees, it should be borne in mind that for four years (from 1878 to 1882) there were nineteen trustees; that the school authorities concluded that nineteen were too many, and that with a view to securing the best results they advised that the number should be reduced to eight or nine. So earnestly was this theory urged that Congress was persuaded to reduce the number to nine. Why there should be any change at this time does not sufficiently appear. If a plan can be devised which will concentrate the responsibility for the proper conduct of the schools, render patronage with respect to the appointment of teachers impossible, place the guardianship and protection of the immensely valuable property represented by and belonging to the schools in responsible hands, and, under the supervision of agents paid for such work, keep divisions, factions, bickerings, and scandals of every sort out of contact with the school system, and if along with all this the services of citizens of ability and education can be obtained as advisors of the Commissioners in their supervision of educational matters relating to the public schools, the Commissioners think a great work will be accomplished for the good of the public schools. The Commissioners believe that this can be accomplished without further legislation, and they intend to devote the means at their disposal and every force and agency which they can call to their assistance to the introduction and perfection of this plan.

Very respectfully,

WM. TINDALL,
Secretary.

Dr. ROBERT REYBURN,
Chairman Committee, &c.

EXHIBIT B.

WASHINGTON, *February* 8, 1886.

ROBERT REYBURN, M. D.,
Chairman of Citizens' Committee, &c.:

Your letter and the accompanying proposed school law were received.

In responding to your request for my views on the bill and its principles, I desire to disclaim any authority to speak for the school board, or to represent any other member of that body. The provisions of the proposed law seem to me to respond to the requirements of the situation, the wants of the schools, and the wishes of the people.

The provisions of section 6 of the act of 1878 have always appeared definite and unequivocal to the minds of the lawyers on the present school board and its predecessors, but the Commissioners of the District have not always agreed with the views of the school board. The construction which this act receives at the hands of the present Commissioners demands a declaration from Congress of its intention; and no method presents itself so appropriate and satisfactory as that supplied by the bill now before the committees of the two Houses.

I cannot better answer your questions than by reviewing the situation in the light of the law and of my experience as a school trustee. For eight consecutive years it has been my privilege and pleasure to co-operate with other citizens of the District of Columbia in the development of our school system. During this period, it has been among school people the universally accepted idea that Congress by section 6 of the organic act, June 11, 1878, imposed on the Commissioners the duty of appointing nineteen actual residents of the District as school trustees, and that these nineteen trustees constituted a board. Congress also imposed duties and conferred powers on that Board; limited its jurisdiction to the "care and management of the public schools as now authorized by law," and reserved to the Commissioners the power of removing such trustees, and the power of auditing school accounts.

But the Commissioners by their letter addressed to the board of school trustees, and dated December 31, 1885, a copy of which is hereto annexed, declare, substantially, (1) that there is no school board, and never has been one since June 30, 1878; (2) that the trustees provided for by Congress had no powers conferred or duties imposed by the act creating them, but that all their powers have been derived from the Commissioners by direct delegation or acquiesence; (3) that the trustees are "the agents of the Commissioners, and responsible to them."

Every one familiar with the public school system of the United States will perceive that the Commissioners have undertaken to deprive the school trusteeship of all the incidents which belong to it elsewhere and render it efficient everywhere; that deprived of these incidents it presents the paradox of a trust without confidence, which cannot be acceptable to men of self-respect. The general effect of the commissioners' action is to degrade the dignity of the office of school trustee by taking away the trust and responsibility which make it honorable, and also the independent powers which a school board must possess and exercise in order to accomplish desirable results. The tendency will be, therefore, to deprive both the Commissioners and the District of the services of that class of citizens who, as students of educational methods, and as men experienced in the management of school affairs, are willing to devote much time and attention to public school interests, but who are unwilling to assume duties without commensurate powers, and to become the mere agents of the Commissioners.

The position of the Commissioners is further impolitic, because it places them in the dilemma of either assuming powers never conferred on them by Congress, or of suddenly resuming powers which for the period of eight years they have permitted the school trustees to exercise. Either position cannot fail to be unacceptable to the citizens of the District. Although the Supreme Court of the United States, as early as 1805, decided that the doors of the circuit courts of the country were open to every citizen of every State and closed to every citizen of this District (3d Cranch, 445); although the same high tribunal, in 1820, decided that "the great principle which was asserted in our Revolution that representation is inseparable from taxation" applies to the citizens of the States but not to the citizens of this District (5th Wheaton, 317); although Congress has deprived the citizens of every political right save that of petition and the privilege of paying taxes; although every small community in the ever self-governing North, every enfranchised negro settlement in the South, every citizen elsewhere, native or naturalized, white or black, has a voice in local affairs, the two hundred thousand citizens of the District are sought to be deprived of the one only municipal power they possess—that of managing their public schools, as they are managed elsewhere, by a school board clothed with adequate powers and responsible to the people.

I cannot presume that it was the original intention of the Commissioners to take from the school trustees all educational power and immediately restore it. Yet, if

they delegate less than all they will not satisfy friends of public education. The ple have seen their schools develop under the exercise of these powers, not onl the school boards under their present form of government, but by the school boar the territorial government and the old municipalities of Washington and Geo town.

The position of the Commissioners seems to me to be unwise, because it is a ra innovation, not only on the theory and practice of school organization and man ment in the District, but in the cities and towns of the country.

The late John D. Philbrick, LL. D., the recognized authority in this cou and Europe on the American public school system, says, in his City School Sys in the United States, "The schools of cities are controlled and managed by boards, variously designated in different sections of the country as school con tees, school visitors, school directors, school trustees, school commissioners, and s boards" (pp. 9–14).

As to their powers and duties, he adds: "For the most part, school boards a vested with authority to manage whatever relates to instruction within the l prescribed by law, and to control the expenditure of the funds legally provided t for. They have the power to certificate, elect, and dismiss teachers, and fix compensation; they determine the grading and course of study of the schools prescribe the books to be used; they make the regulations for the admission of p to the different grades of schools, for promotion from one class to another, an gradation, but are not empowered to establish schools or provide for instructio authorized by law, neither have they the custody or disbursement of school mon (pp. 17, 18).

This extract from Dr. Philbrick's monograph defines almost literally the powe ercised and duties performed heretofore by the school board of the District o lumbia.

Is it not greatly in favor of our system that it should correspond so harmoni with the prevailing systems of the country? Is innovation a reformation, wher theories of educators throughout the United States, and the practice of munici ties all over the land, protest against the proposed change?

The illegality of the Commissioners' position.

With all deference to the opinion of the honorable Commissioners and that of counsel, I respectfully submit that the proper construction of the act of 1878 is dir opposite to that which is given in their letter of the 31st of December last. Be the phrase "nineteen persons," &c., appears in, and the word "board" is om from, the organic act, the inference of the Commissioners is that there is no s board. This is erroneous, because there was an inherent power in the nineteen tees to organize themselves into a board, for without such organization they not accomplish the end of their creation, and would have been an anomaly in s systems.

As courts take judicial notice, Congress takes what might be called legislativ tice. Senators and Representatives are more or less familiar with what is calle American system of public education. Its characteristic and distinguishing fe is the school board. There are now, and always have been, educators in Congres know that American schools are almost without exception managed by bodies cially created for this purpose, and that without such organization as experienc gests, no equally satisfactory combination of intellectual forces for the attainme educational ends presents itself.

Even if the absence of the word "board," in the act of 1878, left the schools t vagaries of nineteen individuals, possessing contemporaneous and coterminous au ity, Congress, in 1882, dissipated all doubt by abolishing the board of nineteen tr and creating a board of nine trustees. In this last statute Congress used the "board." Besides, the honorable Commissioners and their predecessors have period of eight years addressed every official communication to the trustees b title of "The Board of School Trustees," &c.

The organic act, section 6, first clause, provides:

"From and after the 1st day of July, 1878, the Board of Metropolitan Polic the Board of School Trustees shall be abolished, and all the powers and duties exercised by them shall be transferred to said Commissioners of the District o lumbia, who shall have authority to employ such officers and agents and to such provisions as may be necessary to carry into execution the powers and d devolved upon them by this act."

If the legislature had halted here, the position of the Commissioners would b assailable; but the next clause of section 6 presents the inconsistency of their p sition. It reads as follows:

"And the Commissioners of the District of Columbia shall, from time to time

int nineteen persons, actual residents of the District, to constitute the trustees of e public schools of said District, who shall serve without compensation, and for ch terms as said Commissioners shall fix. Said trustees shall have the powers and rform the duties in relation to the care and management of the public schools which e now authorized by law."

By the first clause two municipal boards were abolished. By the second clause the *rsonnel* at least of one was restored, and although Congress did not use the word board," it evidently intended that the "nineteen actual residents" should constite a board of school trustees.

When, by the first clause, Congress abolished the board of school trustees, it transrred to the Commissioners "the duties and powers exercised" by the Board. What ere those duties and powers? The answer is, they were the duties and powers preribed or authorized at that time by law; *i. e.*, Congressional enactments, Territorial d municipal ordinances. But when, by the second clause, Congress restored the oard of school trustees, it also restored its powers and duties, and they were such as ere then authorized by law. The act says, "Said trustees shall have the powers and rform the duties in relation to the care and management of the public schools which e now authorized by law." What powers, therefore, do the Commissioners possess hich they can delegate to the board of trustees? If the first clause alone stood on e statute book, they would have simply inherited the powers of the old school oard, but those powers were restored by clause second to the new school board.

The history of these contradictory clauses explains the intention of Congress, if any ubt remains. In the legislation which changed the Territorial government into a rmanent government by Commissioners, it was rather an oversight than deliberate tention to abolish the school board. A citizen drafted the second clause of section which is an absolute repeal of the first clause as far as it relates to the public hools. It was presented to the District Committee of the House, and was made w.

In conclusion, I would respectfully submit, that by the organic act the school board , within the scope of powers conferred by Congress, a body independent of the Comissioners; that the school trustees are the creatures of Congress, appointees of the ommissioners, servants of the people, but not the mere agents of the Commissioners. he "agents and officers" referred to as substitutes for members of the Board of etropolitan Police are the paid employés of the District government. Citizens who e willing, without compensation, to devote their best energies to the good of the blic schools are not disposed to accept this relation of mere agency; and however atifying the approval of the Commissioners might be, they regard the success of the hool system as the highest reward of their services and the chief object of their bors.

The duties and powers of the honorable Commissioners seem to me to be clearly deied by the organic act.

It is made obligatory upon them to appoint school-masters; they are limited in their ection to a particular class, namely, "actual residents of said District." They are liberty to fix the terms of service of said trustees; they have control over the exnditure of money for school objects, having to conform to the detailed appropriaans of Congress; but in all other matters relating to the schools, the care and mansment are exclusively in the hands of the Board of School Trustees.

Very respectfully,

B. G. LOVEJOY,
President of the School Board.

OFFICE OF THE COMMISSIONERS, DISTRICT OF COLUMBIA,
Washington, December 30, 1885.

ENTLEMEN: The letter of your secretary, bearing date December 22, 1885, transting a resolution declaring the schedule of salaries of teachers, fixed by the school stees for the present year, to be in the main equitable and not excessive, and uesting the Commissioners of the District of Columbia to ask Congress to approate the sum of $8,000 to meet the deficiency in the amount appropriated for those aries, has been received and duly considered. On the 8th of October, 1885, a letter s addressed to Mr. W. H. Baum, president, from this office, in which you were ormed that "there is no authority on the part of the Commissioners or Board of istees to make any contracts in excess of the appropriations, and there should be promise made to the teachers nor any inducement held out to them leading them suppose that they will receive any such excess."

The Commissioners do not see how they can consistently ask for a deficiency under the cumstances attending this case. The appropriation made by Congress is in excess

of that provided for the preceding year, and it was the duty of all concerned to see that the salaries to which it was applicable were kept within the amount appropriated. In fact the deficiency has been created by yourselves; it has not grown out of any circumstances beyond your control or foresight, and it will not do to ask Congress to make a further appropriation. You were distinctly authorized to fix the salaries of teachers upon the condition that the appropriation should not be exceeded.

The Commissioners in this connection would call your attention to the sixth section of the act of Congress of June 11, 1878, by which the "Board of Trustees of Public Schools" is abolished, and all the powers and duties theretofore exercised or in any way performed by the said board are devolved upon the Commissioners of the District of Columbia. This provision of the law is so simple and plain that there can be no doubt as to its effects and as to the duty imposed upon the Commissioners by the law referred to. This section also provides that the Commissioners shall appoint nineteen (afterwards changed to nine) persons, who shall be trustees of the public schools and as such have the "care and management of the schools under existing laws." The Commissioners are advised by counsel that under this act they are clothed with all the powers and duties of the board of trustees of public schools as they existed at the date of the passage of the said act of Congress, and that the trustees appointed thereunder are their agents, and as such responsible to them. Several orders have been made delegating to the trustees of public schools a portion of the power of the Commissioners with respect thereto. The said trustees have been acting as a board of trustees, and have also performed many of the duties, and have exercised much of the authority belonging to the board of trustees under the laws existing at the date of the passage of the said act of Congress, and as all this has been done with the acquiescence of the Commissioners, it would seem that these actions of the trustees have received such sanction as to give them the authority of legal acts. This condition of affairs has produced its natural consequences, and the peculiar condition of things now existing between the Commissioners and the trustees of public schools is one of those consequences. It is impossible to tell now where the purview of one ends and that of the other begins. The Commissioners think it is time that this anomalous condition of things should cease; that their authority as Commissioners should be asserted, and that the duties and powers of the trustees should be distinctly defined.

The only legal function to be exercised by the trustees appointed under the law is, "the care and management of the schools." But it is evident that this function cannot be exercised until the school is complete in all its parts. The term "schools," as here used, evidently embraces all the appurtenances of a school, such as a school-house, a collection of pupils, a teacher, and the proper person to have charge or care of the school-house. When applied to a system of schools, such as exists in this District, this term *school* also includes the superintendency or supervision of the system. This being so, the Commissioners are of the opinion that they, and not the trustees, are clothed with the authority necessary to the proper creation and regulation of the schools; that is to say, the selection of the superintendent of schools and his assistants, of the teachers who are to have charge of each particular school, and of the persons to whom are to be intrusted the care of the several school-houses in the District. Besides this the Commissioners have the duty imposed upon them to select sites for school buildings, to determine when school-houses are needed, and to erect such houses when needed, to fix and determine the salaries of teachers, and to see that such salaries are duly paid. All this the Commissioners are to do with certain agencies by them selected, and the law does not limit them in the character or number of the agencies to which they are to resort, except as to the number of trustees, who are undoubtedly one of those agencies, and as to the duties to be assigned to such trustees—that is to say, the care and management of schools.

These words "care and management," which limit and control the powers of the trustees, seem to the Commissioners to be broad enough to include many and very important and responsible duties. The attorney for the district, in speaking of these duties, uses this language: "The trustees, without pay, are to take this care and management. Obviously, while their duties are of the highest character, delicate and important, upon a due performance of which, other needed conditions being provided, the usefulness of the schools must mainly depend, they lie within a narrow compass, and pertain quite exclusively to the working power of the educational machinery, which they neither supply, maintain, nor repair. Upon these important matters, supply and repair, their action cannot be but advisory."

After speaking of the distinction made by the law between the schools for white and colored children, the attorney goes on to say: "Whatever else is necessary in the way of classification of pupils, grading schools, numbers to each teacher, hours of assembling, and length of session; the whole matter of discipline in the schools, examinations, promotion, criticism of teachers and methods of teaching, the course of study, the books to be used, and perhaps other matters pertaining to the welfare of the schools are among the powers and duties of the trustees."

The Commissioners desire to give such form to the duties above specified as will relieve them from all uncertainty, and fix the limits within which the trustees are to act. With this view they propose for the present to annul all orders heretofore made by them delegating any of that authority which properly belongs to them, to the trustees, and they further propose, without delay, to cause such regulations to be prepared and issued from this office as in their judgment, in which they would be glad to be aided by you, are best for the good of the public schools of this District.

Very respectfully,

WILLIAM TINDALL,
Secretary.

The BOARD OF SCHOOL TRUSTEES, *District of Columbia.*

EXHIBIT C.

In 1877 the late John D. Philbrick, for twenty years superintendent of public schools in Boston, and a recognized authority on city systems of schools, visited Pittsburgh, Cincinnati, Louisville, Saint Louis, Chicago, Cleveland, and New York, "in search of information for the benefit of education in Boston"; and, on his return he reported to his board "some remarks on such features" of the school systems in the cities visited "as appear to me most likely to afford useful hints and suggestions for the improvement of our own." The following is what he said about school boards and their powers:

"*School boards—how constituted.*—The system of education in each city visited is under the control of a board of education, of which the number of members is not at all proportioned to the population of the city to which it belongs. The Cincinnati board is the largest in proportion to its population, and the New York board is the smallest. Pittsburgh, with a population of about one-ninth of that of New York, has a board more than fifty per cent. larger. Louisville, with a population less than a third of that of Saint Louis, has a board of equal size. The boards differ not only in the proportion of members, but also in respect to mode of election and tenure of office. In Cincinnati, Louisville, and Saint Louis they are elected by the people in the several wards, to serve for two years, one-half going out of office each year, each ward having two members, except in the case of Cleveland, where each ward has one member. In New York the members are appointed by the mayor without regard to ward representation, to hold office for three years, one-third going out each year; and at Pittsburgh the term of office is the same, but the members are elected, one for each sub-district or ward, by its board of school directors, which is half chosen by the people.

"The following table shows, first, the population of the cities; second, the number of members in each school board; third, the terms of service; fourth, the representatives; and fifth, the mode of choice:

Cities.	Population (estimated).	No. of members.	Term of service.	Representation.	How chosen.
			Years.		
Chicago	425,000	15	3	At large	Mayor.
Cincinnati	270,000	50	2	Ward	People.
Cleveland	140,000	18	2	....do	Do.
Louisville	120,000	26	2	....do	Do.
New York	1,200,000	21	3	At large	Mayor.
Pittsburgh	130,000	33	3	Ward	School directors.
Saint Louis	350,000	26	2	....do	People.
Boston	363,000	25	3	At large	Do.
Worcester	59,000	25	3	....do	Do.
Buffalo	155,000	.....	1	....do	President city council.

"The aim of the most intelligent friends of our schools has been to separate their administration as far as practicable from the influence of party politics. In this direction, however, much remains to be desired. Everywhere there are unscrupulous politicians who do not hesitate to improve every opportunity to sacrifice the interests of the schools to the purposes of the political machine. Here is found the source of the most general, as well as the most serious, evil of our city systems. Long ago this evil became so grievous in some of our largest cities that the election of school boards by popular vote was abandoned. In New York it was replaced by appointment by the

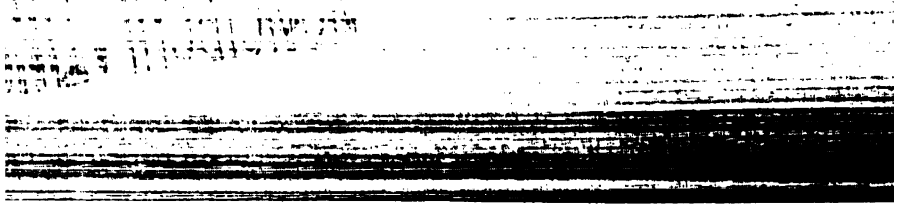
mayor; in Philadelphia, by appointment by judges of a superior court; in Chicago, by election by the city council; in other cities various expedients have been resorted to as safeguards against the "harmful influence of ward politicians" in the administration of school affairs; in Pittsburgh, for example, the members of the central school board are elected by the local school boards; in Boston, for a number of years past the members have been elected on a general ticket. Perhaps there is no city whose school board is constituted in a more objectionable manner than that of the city of Buffalo, which is merely a special committee of the city council, holding office for one year only. On the other hand, it is safe to say that no city has ever come nearer to the realization of the ideal school board than has the city of Denver. The members of this board have been from its origin, so far as I was able to ascertain by inquiry on the ground, unexceptionable in respect to character, ability, and faithful devotion to the interests of the schools. The choice has been made at a special election for this purpose alone, without any connection whatever with municipal or State elections. I am far from concluding, however, that this happy result is attributable solely to the mode of election. It is due to a peculiar concurrence of circumstances in connection with the mode of election, and the long continuation of similar results is too much to expect."—(Board of Education Circular No. 1, 1885, page 15.)

Powers of school boards.—These school boards have, in nearly every case, considerably larger powers than the Boston board. They not only have the care and management of the schools, but they purchase the lots, erect and repair the school-houses, employ the janitors, and furnish the fuel and other supplies. Nearly all of them determine the school tax to be levied within certain limits of rates fixed by law. They do not depend upon the city governments for appropriations. In Saint Louis and Pittsburgh the boards have the custody and disbursementof the school moneys, while in the other cities these functions are performed by the city treasurers. But although the administration in these two cities is alike in this respect, in other respects it is perhaps the most unlike. Pittsburgh is the only one of these cities having local school boards elected by the people, where there are thirty-three of these boards, each consisting of six members, who hold office for three years, one-third going out each year. With these local boards of directors with an aggregate of one hundred and ninety-eight members, the general or central board, as it is called, shares the management of the schools, the central board having the exclusive control only of the high school and the colored schools. It has, besides, control in respect to three vital elements of school economy, namely, that of determining the number of teachers to be employed, of fixing their salaries (within the limits of the appropriations), and of prescribing the text-books and the courses of study. This extremely decentralized and complicated system of management has its counterpart in the Philadelphia system, and its contrast in the centralized simplicity of the system in Saint Louis, where one moderate-sized board exercises absolute control of all school matters under the State laws.

Although the Boston school board is somewhat restricted in its powers as compared with the school boards in Western cities, this limitation of power has its compensation in certain advantages of great importance. If our board is not invested with authority to levy taxes within certain limits for school purposes, it has the more important legal right of determining the number, grade, and rates of salaries of teachers, without regard to the amount appropriated for this purpose by municipal authorities. The supreme advantage of our system, as it appears to me, is found in this wise, far-reaching and fruitful provision of the school law of this Commonwealth.

Upon a superficial view of the matter, it would seem best that a school board of a large city should have absolute control of the matter of providing school accommodations, including not only the selection and purchase of lots, the determining of the plans, and the erection of buildings, but also the decision as to the amount to be expended therefor. In the annual report of the school board for 1867 is found an earnest appeal for an enlargement of their powers in respect to providing school accommodations, although it did not go to the length of asking for the power of determining the amount to be expended for this purpose. The extent of the claim was for entire control of the money appropriations for school-houses and lots by the city council. At that time I think the board was quite unanimously in favor of this claim. The experience of the last twenty years has convinced me that the granting of this power would not have been an advantage to the interests of our system. What was needed was an authoritative voice in the matter, and not the absolute control. Had the board possessed the requisite authority in this respect—that is, the veto power—many serious errors in the location and construction of school-houses would have been avoided. The city council has not been wanting in liberality in providing school accommodations, but it has been, in some instances, obstinate in rejecting the sound advice of the school board as to sites and plans. The act of 1875, reorganizing the school board, has effectually remedied this defect in our system. It goes just far enough in making it necessary that sites and plans shall be approved by the school board without im-

ng upon the board the duty of purchasing lots and building school-houses. There
fear that in this community public sentiment, as embodied in the representatives
he people in the city government, will not be sufficiently liberal in respect to
ing appropriations for school accommodations, and, under the new order of
gs, the authority to determine the kind of accommodations provided, is placed in
er hands. The experience of the past year in this department of the school af-
affords strong proof of the wisdom of the new arrangement whereby the control
spect to the plans and sites has been virtually placed in the hands of the school
d, while the purchase of lots and the erection of buildings has been left with the
council.



49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 73.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1886.—Referred to the Committee on the District of Columbia and ordered to be printed.

Mr. LOGAN presented the following

STATEMENT:

[In support of the bill (S. 1567) to regulate gas works in the District of Columbia.]

SUGGESTIONS FOR COMMITTEE.

Only changes from original act of June 23, 1874, are on page 1 of bill—Candle power raised from 16 to 18. All the provisions in regard to photometer, Argand burner, and chemical compounds are same as now. The penalty clause is similar, except that in the present bill suit must be brought in court to collect same.

Section 2. Only change is 18 instead of 16 candles.

Section 3. The present fee of 50 cents to inspector has not been accounted for; he uses it to pay the expenses of his office, now paid by Gas Company, but he pays expenses out of it. The bill requires him to cover it into the Treasury, and the company pay the expenses.

Section 4. At present the Washington Gas Company charges for the service pipes. No other gas company does this. The bill makes the gas company pay for service pipes.

Section 5. Use of petroleum in manufacture of gas is injurious. The company now uses nearly 1,250,000 gallons of petroleum a year. The bill prohibits use of petroleum in any of its forms, and compels use of coal only.

Section 7 is a reduction of 25 cents a foot on present prices.

Section 8 is a reduction of 25 cents also.

Section 9 is a reduction of $2 per annum on present prices on city lamps.

The capital of the Washington Gas Company is $2,000,000, in shares of $20 each. It pays regular dividends at the rate of 10 per cent. per annum, and every few years pays large extra dividends. The last was one of 40 per cent., paid in 1883. Its average yearly dividend for the past twelve years has been over 18 per cent.

According to its statement just issued, the earnings for 1885 were over $350,000 net, equal to 17½ per cent. on the capital of $2,000,000. The surplus was $230,000, besides over $400,000 invested in plant. The net earnings for 1884 were $275,000, those for 1885 being an increase of $75,000, or nearly 27½ per cent., while the expenses have not increased at all (only $1,000). At the present rate of increase this year, the company would be earning 21 per cent. net, and it is now time for the people to have some of the benefits by way of reduction of cost.

C

Calendar No. 217.

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 74.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1886.—Placed on the Calendar and ordered to be printed.

Mr. EDMUNDS, from the Committee on the Judiciary, reported the following

[See Report No. 135.]

RESOLUTIONS:

Resolved, That the foregoing report of the Committee on the Judiciary be agreed to and adopted.

Resolved, That the Senate hereby expresses its condemnation of the refusal of the Attorney-General, under whatever influence, to send to the Senate copies of papers called for by its resolution of the 25th of January, and set forth in the report of the Committee on the Judiciary, as in violation of his official duty and subversive of the fundamental principles of the Government and of a good administration thereof.

Resolved, That it is, under these circumstances, the duty of the Senate to refuse its advice and consent to proposed removals of officers, the documents and papers in reference to the supposed official or personal misconduct of whom are withheld by the Executive or any head of a Department when deemed necessary by the Senate and called for in considering the matter.

Resolved, That the provision of section 1754 of the Revised Statutes declaring—

> That persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty, shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such office—

ought to be faithfully and fully put in execution, and that to remove, or to propose to remove, any such soldier, whose faithfulness, competency, and character are above reproach, and to give place to another who has not rendered such service, is a violation of the spirit of the law, and of the practical gratitude the people and Government of the United States owe to the defenders of constitutional liberty and the integrity of the Government.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 75.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1886.—Ordered to be printed.

Mr. HALE, from the Committee on Naval Affairs, submitted the following

VIEWS:

[To accompany bill S. 371.]

This bill, by its provisions, will largely nullify the legislation contained in the act of August 5, 1882, which, after discussion, was adopted as the first step in a wise policy intended to remedy a definite and admitted evil.

This evil consisted in introducing from the Naval Academy into the naval service a number of officers greatly disproportionate to the wants of the service.

Two things had resulted from this evil which were intolerable to the country and to the service itself: first, the naval list had been indefinitely swollen and the expenses thereby to the country enormously increased; secondly, as there was no limit to the lowest grade, while all the grades above were limited, it created an immense reservoir of young officers who were pouring in at the foot of the list, which list remained choked for years, with no sufficient outlet.

This condition delayed promotion and forced the younger officers of the Navy to remain in the lowest grades until middle life overtook them. Without the incentive which reasonable promotion offers, ambition and enterprise were dying out, and the *morale* of the service had become seriously impaired.

In the line of the Navy the number of graduates entering the unlimited grade of midshipmen was from 40 to 50 a year; it had once been as high as 70; while the number promoted by ordinary vacancies was less than 20. The head of each grade was thus kept back by the lower man in the grade above, and it was seen that unless the evil was removed naval graduates would still be midshipmen at thirty-three or even thirty-five years of age, remaining ten to twelve years in that grade.

Already, in July, 1882, the number of midshipmen had reached 91, with enough more of those whose promotion had been temporarily delayed, to make 111 in all. Every grade above was full. The next class coming up for final graduation in 1883 numbered 70, so that the list of midshipmen in August, 1883, making a fair allowance for casualties, would have been at least 175.

The next four classes numbered 37, 38, 32, and 40 members, respectively, in all 147, which, making every allowance for casualties, would bring the number of the grade of midshipmen, within five years from the passage of the act, up to 248.

This would have been suffocation. It would have removed nearly all inducement to the naval cadets to graduate and enter the service, as

the best part of their middle life would be passed in the lowest grade in the service.

The overcrowded condition referred to was not confined to line officers. The Engineer Corps also was receiving large additions from the Academy, the graduates numbering 25 a year, probably three times the number necessary to supply the ordinary waste of the Corps.

The act of 1882 reduced the three grades of chief engineer, passed assistant engineer, and assistant engineer to a total of 170, 61 less than the figures shown by the July Register of that year. Very little of this reduction has yet been accomplished.

The remedy was simple and obvious, and was put in force by the act of 1882. It consisted in making the number of admissions to the Navy dependent on the number of vacancies at the foot of the list, with the reservation that the ten best graduates of the year should always be taken. In fact it has been found that the needs of the service require from fifteen to twenty each year, and, under the present law, as many are taken.

The act of 1882 reduced the number of officers to be allowed in the grades above midshipmen. This made immediate action below doubly necessary. Under the act the upper grades were not only full but they had a surplus of 115, which could only be worked off with the lapse of time, causing still further delays in the advancement of junior officers.

In the line the maximum in these grades, fixed by the act of 1882, has only just been reached by the reductions under that law, and under its wise provisions a cadet in the Naval Academy who, by good conduct and a studious course, added to natural abilities, succeeds in graduating into the lower rank of the active Navy, now that of ensign, may have a reasonable expectation of such a promotion into the upper grades as will justify his remaining in the service.

This bill proposes to change all this, and to unload into the lower grade of the Navy 145 young officers, more than one-half of whom have already been separated from the Academy and from the naval service, and have lost the benefit of continuous study, or of the training which the service affords.

Under the claim of equity to the young men who have left the service under the provisions of the act of August, 1882, it inflicts upon all the classes that have entered since an additional service of six years in the lower grade.

It punishes every bright cadet who has entered the Academy in the last three years, or will enter for the next three years, and takes away from him the stimulus needed to keep him up to fair proficiency in the course of study.

It is difficult to exaggerate the evil effect resulting to the naval service from the passage of the pending bill. It would restore the deplorable condition in which the naval list was found in 1882. It proposes to realize all the prospective evils which the act was designed to avert, and which it actually did avert.

Into this overcrowded lower list these 145 young men will be thrown, a large number of whom, having been out of the service for about three years, have become engaged in other occupations and estranged from naval discipline. Indeed, the effect would be to restore those of the least merit, for the brightest and most enterprising will be found to have already secured employment in other vocations. To restore them now would be a gross injustice to those who, although entering the Academy afterwards, have shown a zeal and attention to duty which

have secured for them the prize of a naval commission, and who, by restoration of inferior men, could be kept back for years from deserved promotion. Sloth and inefficiency are the sure results of such a course.

As a matter of public policy the proposed measure has nothing in its favor and everything to condemn it. It can only be discussed in its bearing on the claims of private individuals. It is claimed that the act of 1882 has done an injustice to those young men who were excluded under its operation from the Navy.

This claim proceeds upon the assumption that the Government, by appointing them pupils at the Naval Academy, had thereby contracted an obligation to commission them as officers in its service. A careful consideration of the conditions under which their connection with the Navy was formed and maintained shows that, so far from the Government's resting under any obligation to them, it has laid them under heavy obligations to itself.

They were received into the Academy as beneficiaries. They were not pensioners, receiving a reward for previous service, but novices, apprentices, pupils, whom the Government was willing to educate solely for reasons of public policy. The fact that they received a gratuitous education for no merits or services of their own does not give them any claims upon the Government, which has already granted to them benefits incalculably in excess of those which it is able to give to the sons of citizens generally. They had no claim at the outset, and they could derive none from being merely the recipients of favor. Besides, they not only received their education, but, during the years of pupilage, while rendering no service, they were granted a liberal allowance in the shape of pay to the amount of $609 a year.

There are few young men in the country that would not eagerly avail themselves of such advantages for their intrinsic worth, and deem themselves highly benefited by receiving them, without any question of ulterior prospects. In addition to this, each cadet discharged received from the Government the sum of $950. Moreover, no Secretary of the Navy can find any use for this increased number of officers. At the time of the passage of the act of 1882 there were 1,817 naval officers on the active list. Their annual pay amounted to, and they were receiving, $3,825,400, while the Government only had thirty-one naval vessels in commission, being fifty-nine officers for each ship, or one officer to every five men.

The number of effective ships has not been increased since that date, and the desired and hoped-for addition of new ships which may be made to the Navy during the next five years is not likely to more than take the place of wooden ships which must be dropped from the service. Even with the reductions made under the act of 1882, should no change be made in the policy then established, the United States Navy yet remains top-heavy, and this bill proposes to aggravate that evil, and, at the expense of the Government, to do away with a large part of the saving which resulted from that act.

The act of 1882 did nothing more than the French and German Governments have done, which, after the Franco-Prussian war, adopted the policy of educating a large number of young men, and, at the end of their course, discharging them, so that in case of emergency they might be drawn upon in increasing the official personnel of the Navy.

Should Congress be disregardful of these considerations and pass the present bill, we recommend certain amendments, which will become necessary in order to prevent this undue increase of the officers of the naval establishment. If this bill is forced through, then something must

be done to prevent further graduations from the Naval Academy—for instance, shutting up that institution for several years. A provision should also be made adapting the upper grades of the service to the condition of the lower grade established by this bill.

The committee will present amendments covering these points, and, as a part of this report, the committee appends to this the accompanying communications and papers.

EUGENE HALE.
J. R. McPHERSON.
JO. C. S. BLACKBURN.
H. H. RIDDLEBERGER.

NAVY DEPARTMENT,
Washington, February 3, 1886.

SIR: In answer to the inquiry contained in your communication of January 22, inquiring whether the needs of the service at the present time are such that there is any call that a large number of young officers should be suddenly brought into the service, as contemplated by Senate bill No. 371, I would reply that Congress has already fixed the requirements of the service as to the number of officers by statute, in which I acquiesce. At the present time I see no need for a greater number. If this large number is to be added to the list, I think it should be accompanied by a change in the law, making permanent increase in the number of officers in the different grades; otherwise the excess above the statutory limit will be so large in the grades of ensign and assistant engineer at the present time as to make promotion from the lowest grade so slow that the service would hardly offer temptations to ambitious men.

It can be readily seen that a present graduate entering the service would remain, under the present law (with this addition of sixty-eight to the list before him), a very long time in the grade of ensign before the promotions would have brought the numbers down to the legal limit, and cleared off those above him, so as to enable him to get promotion.

Very respectfully,

W. C. WHITNEY,
Secretary of the Navy.

Hon. EUGENE HALE,
Committee on Naval Affairs, United States Senate.

NAVY DEPARTMENT,
Washington, February 2, 1886.

SIR: I have the honor to acknowledge the receipt of your letter of the 22d ultimo, inclosing for examination a copy of a bill (S. 371), limiting the application of certain provisions in the act of August 5, 1882, relating to naval cadets.

The Department is also in receipt of Senator M. C. Butler's letter of the 27th instant, inclosing a copy of the amendment proposed by him in lieu of the bill above referred to, and requesting that both the original bill and the proposed substitute be considered at the same time.

In reply to your request for information as to the number of cadets that, under the provisions of the bill, would be again received into the naval service, and as to the expense attendant upon the same, and as to the increase of the lower grades in numbers which would result therefrom, I beg leave to make the following statement:

Under the provisions of the act of August 5, 1882, bearing upon this subject, sixty-eight cadet-midshipmen and thirty-four cadet-engineers have been honorably discharged, besides two cadet-midshipmen and one cadet-engineer, who were honorably discharged at their own request. The sixty-eight cadet-midshipmen above referred to would become ensigns, and the thirty-four cadet-engineers would become assistant engineers, if returned to the service under the proposed bill. Of this number eight cadet-midshipmen and two cadet-engineers were found physically disqualified at the date of graduation, but in view of the fact that their discharge was not based alone on that ground, the fact of physical disqualification was waived, and they were granted certificates of graduation and were honorably discharged in the same manner as other graduates physically qualified and honorably discharged. Whether the measure now in contemplation is intended to include the return of these cadets, not-

withstanding the fact of such disqualification, is a question which the Department respectfully submits for the consideration of the committee.

The following statement will enable the committee to determine approximately the amount of additional expenditure involved in the bill as originally submitted.

Should the 102 ex-cadets be returned to the service there will be an expenditure at the outset of about $111,500, distributed as follows:

Waiting orders pay of 39 ensigns from June 30, 1883, to June 30, 1886, at $800 per annum		$93,600	
Deduct honorable-discharge money, at $950 each		37,050	
			$57,550
Waiting orders pay of 21 assistant engineers from June 30, 1883, to June 30, 1886, at $1,000 per annum		63,000	
Deduct honorable-discharge money, at $950 each		19,950	
			43,050
Waiting orders pay of 8 ensigns from June 30, 1884, June 30, 1886, at $800 per annum		12,400	
Deduct honorable-discharge money, at $950 each		7,000	
			5,400
Waiting orders pay of 8 assistant engineers, from June 30, 1884, to June 30, 1886, at $1,000 per annum		16,000	
Deduct honorable-discharge money, at $950 each		7,600	
			8,400
Waiting orders pay of 21 ensigns from June 30, 1885, to June 30, 1886	$16,800		
Deduct honorable-discharge money	19,950		
Balance due Government	3,150		
Waiting orders pay of 5 assistant engineers from June 30, 1885, to June 30, 1886, at $1,000 per annum		5,000	
Deduct honorable-discharge money		4,750	
			250
			114,650
Deduct money to be returned by ensigns who were discharged June 30, 1885			3,150
			111,500

The number of ensigns on the active list is fixed at 178. There are now on that list 180. The addition of 68 to that number would involve an approximate expenditure of $81,600 per annum for six years or until the number should be reduced to the limit. Total expenditure for six years, $489,600.

The number of assistant engineers on the active list is fixed at 40. There are now 66 on that list, and if 34 are added thereto it would involve an approximate expenditure of $57,800 per annum for about six years for their maintenance, which would be $346,800.

TOTAL ESTIMATED EXPENDITURES

Back pay	$111,500
Cost of maintaining 68 ensigns for six years	489,600
Cost of maintaining 34 assistants engineers for six years	346,800
Grand total	947,900

The back pay, as stated above, is practically correct, but the pay of the ensigns and assistant engineers for their six years' maintenance is computed at the highest rate, and will vary according to the duty on which they are assigned; but unquestionably these officers would, during the greater portion of that period, be on sea pay, which is the highest rate of pay.

The estimated time for promotion might also be reduced a little by casualties and other unforeseen contingencies incident to the service.

It is deemed proper to add, for the further information of the committee, that the class of cadets which will complete the six years' course in June, 1886, is now composed of 39 members, of whom probably 34 will pass a successful examination; the class to complete the course in June, 1887, now numbers 34, of whom probably 29 will pass; and the class to complete the course in June, 1888, now numbers 25, of whom probably 18 will pass; hence, if the proposed bill shall become a law, such graduates, 81 in all, will also be retained in the service.

Referring to questions affecting the policy of the proposed measure, as indicated in the concluding paragraph of your letter, I beg leave to say that the Secretary of the Navy being absent and expected to return by to-morrow, I deem it advisable to await his return in order that he may inform the committee of his views as to the present

or future needs of the service in connection with the proposed increase in the number of junior officers.

Referring to the preceding statement of estimated expenditures, I have to add that in case the amendment cutting off back pay should be adopted, such expenditures will be reduced to the extent of $111,500, leaving a total of $836,400 as the increased expenditure which will probably be occasioned should the bill become a law.

Very respectfully,

D. B. HARMONY,
Acting Secretary of the Navy.

Hon. EUGENE HALE,
Committee on Naval Affairs, U. S. Senate.

MEMORANDUM A.

Memorandum from the Navy Department as to expenditure involved under Senate bill No.

Under the operations of the act of Congress of August 5, 1882, 105 naval cadets have been honorably discharged from the naval service, 70 of whom entered the Academy as cadet-midshipmen and 35 as cadet-engineers. Two of the cadet-midshipmen and one cadet-engineer of this number, who would have been retained in the service, were honorably discharged at their own requests, and it is not thought that they could now return to the service should the proposed bill become a law; hence the list would stand 68 cadet-midshipmen and 34 cadet-engineers.

If these were put back in the service, 68 cadet-midshipmen would be placed on the ensigns' list and 34 cadet-engineers would be made assistant engineers. Of the former, 39 would come between Ensigns Gilbert Wilkes and Spencer S. Wood, 8 between Ensigns John M. Poyer and S. Dana Greene, and 21 after Ensign Harry A. Field. Of the cadet-engineers, 21 would come between Assistant Engineers J. M. Whitham and Emil M. Thiess, 8 between Assistant Engineers Charles E. Rommell and William J. Baxter, and 5 after Assistant Engineer A. S. Halstead. At the rate of promotion since June, 1883, should these officers be restored to the service, it would retard the advancement of the officers affected about six years.

Of the number given above, 8 cadet-midshipmen and 2 cadet-engineers were found physically disqualified, but their disabilities were waived by the Department, and they were given certificates of graduation, and were honorably discharged from the naval service. Though physically disqualified at the time, the fact that they were honorably discharged would allow them to return to the service should the act be passed.

Should these gentlemen return to the Navy it would entail an immediate future expense, as follows:

The number of ensigns on the active list is fixed at 178. There are now on that list 180. The addition of 68 to that number would involve an approximate expenditure of $81,600 per annum for six years, or until the number should be reduced to the limit. Total expenditure for six years, $489,600.

The number of assistant engineers on the active list is fixed at 40. There are now 66 on that list, and if 34 are added thereto it would involve an approximate expenditure of $57,800 per annum, for about six years, for their maintenance, which would be $346,800.

EXPENDITURES.

Cost of maintaining 68 ensigns for six years	$489,600
Cost of maintaining 34 assistant engineers for six years	346,800
Grand total	836,400

The above calculation covers only the discharged cadets and engineers embraced in the three classes which have already graduated, to wit, 1883, 1884, and 1885.

The class that will complete the six years' course in June, 1886, is now composed of 39 members. It is estimated that 34 of that number will be retained should the bill pass.

Class completing course in June, 1887, is now composed of 34 members. It is thought that 29 of that number will be retained. Deducting 30 from these two classes, which number under the law of 1882 will be required to fill vacancies in the service, leaves a further addition to the grade of ensign, under the pending bill, of 43, which would involve a further annual expenditure of $51,000, or for six years, of $306,000.

Total expenditures for next six years:

Cost of maintaining cadets and assistant engineers already discharged, for next six years	[illegible]
Cost of maintaining forty-eight ensigns, to be received from classes of 1886 and 1887	[illegible]
	1,142,400

To this may be added as an estimated cost for maintaining ensigns, kept in the service under this bill, of the class of 68 who entered the service previous to the passage of the act of August, 1882, an estimated sum of $24,000, or, in all, $1,166,400.

If the pay of these 145 officers which the bill proposes to now introduce into the Navy should be carried out, through all the grades of the service until their withdrawal, retirement, or death, maintaining the average of service in the Navy, it would involve an expenditure to the Government of more than $6,000,000.

Proposed amendments.

Cadet-midshipmen, affected by this bill, who entered the Naval Academy as such, shall be appointed ensigns in the line; cadet-engineers who entered as such, shall be appointed assistant engineers, and each of these grades shall be enlarged sufficiently over the existing numbers to meet them, and thereafter shall not be increased beyond such numbers.

From and after the close of the academic year in 1890 the Naval Academy shall be closed for six years.

All future assistant paymasters shall be appointed from graduates of the Academy.

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 75, Part 2.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1886.—Ordered to be printed.

Mr. BUTLER, from the Committee on Naval Affairs, submitted the following

VIEWS:

[To accompany bill S. 371.]

The undersigned, members of Committee on Naval Affairs, to which was referred the bill (S. 371) to prevent the retroactive operation of that portion of the naval appropriation act of August 5, 1882, limiting the number of graduates of the United States Naval Academy to be retained in the service each year (printed on page 285 of volume 22 of the United States Statutes at Large), having carefully considered the same, beg leave to submit the following as their views:

That upon examination we find that a number of the graduates of the United States Naval Academy, at Annapolis, Md., who have successfully completed the four years' course at the Academy and the two years' service at sea, have been honorably discharged from the service under the provisions of said act.

We are of the opinion that said law is retroactive in its operation, and worked great injustice to the cadets who have been already discharged, and will work great injustice to all those who had entered the Academy prior to August 5, 1882, for the following reasons, to wit:

That all the cadets, at the time of their entering said Academy, were required to sign articles agreeing to serve the Government for eight years. This was an *express* contract, and it has been broken by the Government, for many of them have been discharged at the end of *six* years, without cause, and without fault on the part of those so discharged. There was also an *implied* contract on the part of the Government to render their position a permanent one, in consideration of their devoting their lives and labors to their profession, and giving up all ideas and opportunities of making a livelihood by any other means. These young gentlemen also faithfully performed their part of this implied contract, and were rewarded for so doing by being discharged from the service. If the Government can break its contracts, it is difficult to perceive how its citizens can be expected to give it that support and confidence so essential and desirable for it to have.

The idea that a cadet who graduated at Annapolis was secured a position for life, or during good behavior, was universally accepted, and is sustained by the fact that it was so held by the most prominent and distinguished men connected with the highest branches of the public service.

The law under which these young gentlemen entered the service entitled them to promotion on the completion of the six years' course, according to section 1521, United States Revised Statutes, which reads as follows: "When cadet midshipmen shall have successfully passed the

graduating examination at the Academy they shall receive appointments as midshipmen, and shall take rank according to the order of their merit at graduation." We find that all these young gentlemen complied with the provisions of said section, but instead of receiving "appointments as midshipmen" they were discharged from the service.

We further submit that in 1878 a similar act, in relation to the cadets of the Military Academy at West Point, was passed by the House, but was amended in the Senate June 8, 1878, so as not to affect those cadets who had entered the Military Academy prior to the passage of said act, which amendment was concurred in by the House. In view of this precedent we see no reason why the act of August 5, 1882, should not be similarly modified, as herein recommended.

In this connection we also submit that in the Forty-seventh Congress the bill herein proposed was introduced in the Senate and passed that body unanimously, and we believe that it only failed to pass the House from lack of time. At the *last* session of Congress it was again reported favorably, and almost unanimously, by the House Naval Committee, but again failed to be acted on in the press of legislation. These facts are, alone, sufficient to demonstrate the merits of the bill herein proposed.

We further submit that the annual Board of Visitors to the United States Naval Academy in June, 1883, made the following recommendation in their official report to the Secretary of the Navy, to wit:

We recommend that the act of August 5, 1882, be amended, as a similar act in relation to cadets at West Point has been, so as not to include those cadets who had entered the service before the passage of said act.

JOHN G. HOWELL, *Rear-Admiral, U. S. Navy.*
E. G. LAPHAM, *U. S. Senate.*
SAMUEL H. GREEN, *Massachusetts.*
GEORGE A. RITCHIE, *Pennsylvania.*
EDWARD V. KINGSLEY, *New York.*
JOHN W. DRUMMOND, *Illinois.*
THOMAS UPDEGRAFF, *Iowa (member of House).*
ANSON G. MCCOOK, *New York (member of House).*
R. Q. MILLS, *Texas (member of House).*
IRVIN MCDOWELL, *Major-General, U. S. Army.*

The last Board of Visitors to the United States Naval Academy, in June, 1886, renewed the above recommendation in the following terms:

The attention of the Board having been called to the fact that the Board of Visitors in June, 1883, recommended that the act of August 5, 1882, be amended, as a similar act in relation to cadets at West Point has been, so as not to include the cadets who had entered the service before the passage of said act: *Resolved*, That we concur in this recommendation, and respectfully renew the same for the consideration of Congress.

Very respectfully,

ORLANDO M. POE, *United States Army.*
JNO. R. THOMAS, *House of Representatives.*
JNO. G. BALLENTINE, *House of Representatives.*
W. G. SUMNER, *New Haven, Conn.*
JNO. N. A. GRISWOLD, *New York, N. Y.*
WM. REED, *Baltimore, Md.*
JAS. G. GRINNELL, *Greenfield, Mass.*
A. M. CRAIG, *Galesburg, Ill.*

We further submit that this recommendation, as made by two separate Boards of Visitors to the Naval Academy, composed of members of both branches of Congress, and eminent representatives of the Army, the Navy, the judiciary, and *the people*, and appointed for the very purpose of investigating and reporting to the Secretary of the Navy the needs of the service and the Naval Academy, should be of sufficient weight and importance to secure the passage of this bill at the earliest opportunity.

We further submit that, by three separate, recent, and unanimous decisions of the Court of Claims, through a mere technicality in the law, cadet-midshipmen are to be discharged, while cadet-engineers who entered at the same time are to be retained. Cadet-engineers are graduated after four years, while, through the provisions of a like clause, cadet-midshipmen are graduated only after a six years' course. Thus they entered the Academy together, pursued their studies for the same length of time, and finally received their diplomas of graduation together; then, through a difference of wording of two clauses intended to convey the same idea, cadet-midshipmen are discharged while cadet-engineers are retained. Late Secretary of the Navy Chandler said: "Equitably, if the cadet-engineers have any claim, the cadet-midshipman have the same."

We further submit that it has been said, in opposition to this measure, and to distinguish it from the act relating to the cadets at West Point, that the course of studies at Annapolis better fits one for civil life than that at West Point. The reverse of this, however, is the case, as a comparison of the curriculum at the Military Academy with that of the Naval Academy will show. The last two years of the course at the Naval Academy are given entirely to technical studies, and the additional two years of the course at sea are given solely to the practical application of the technical studies, thus further unfitting the graduates for civil life. On the other hand, the graduate of the Military Academy is at least an accomplished civil engineer, and, as such, can always find a lucrative employment. At the end of their six years' course these young men were examined in the following subjects: Practical navigation, compass deviation, theory and practice of gunnery, French, Spanish, seamanship, and naval tactics, and practical steam-engineering. And we do not think that this examination is, in subjects, likely to be of much assistance in civil life.

We further find that all of the classes of 1881 and 1882 were in actual service when the act of August 5, 1882, was passed. Not only had they completed the four years' course at the Naval Academy and received their diplomas of graduation, but they were then serving at sea. Even if desirous of resigning after the passage of this act, in order to engage in some business or profession, their absence from the United States made it almost impossible to secure a position, and, even if they could have done so, the cost of returning to the United States would have been so great that they were forced to remain in the service until the completion of the two years at sea. *The law was not operative when they entered the Academy, and five years later was made to affect them, and is thus retroactive and in effect an ex post facto law.*

In conclusion, we admit the power of Congress to pass the act of August 5, 1882, but maintain that, as a matter of right, equity, and justice, there should have been incorporated therewith a proviso that said act should not affect any one who was in the service at that time.

We therefore recommend the passage of the bill amended as herein proposed.

We submit herewith, as a part of this statement, the opinions of the United States Supreme Court in the cases of The United States, appellant, *vs.* De Witt C. Redgrave, and The United States, appellant, *vs.* Lyman B. Perkins.

J. D. CAMERON.
H. L. DAWES.
LELAND STANFORD.
M. C. BUTLER.

[Supreme Court of the United States. No. 985. October term, 1885. The United States, appellant, *vs.* De Witt C. Redgrave. Appeal from the Court of Claims.]

STATEMENT.

The facts of the case brought here by this appeal, as found by the Court of Claims, are in substance as follows:

In 1877 the appellee, who was the claimant below, entered the Naval Academy as a cadet-engineer, and on June 10, 1881, received a certificate signed by its officers that he had completed the prescribed course of study at the Academy, and had successfully passed the required examination before the academic board. He was on the same date detached from the Academy and ordered to report for duty on board the U. S. practice steamer Mayflower. On August 30, 1881, he was detached from the Mayflower and ordered to proceed home on waiting orders. On October 28, 1881, he was ordered to proceed to the navy-yard at League Island for duty on board the U. S. S. Essex. On April 16, 1883, he reported to the superintendent of the Navy Academy, in pursuance of orders, for examination, which assumed that the act of Congress of August 5, 1882, operated upon him as a naval cadet, requiring a six years' course before graduation, and a final examination at its conclusion. On June 23, 1883, he was detached from the Naval Academy on waiting orders. On June 26, 1883, the Secretary of the Navy addressed to him a letter, in which it is recited that he had successfully completed his six years' course at the Naval Academy, and had received a certificate of graduation by the academic board, but "not being required to fill any vacancy in the naval service happening during the year preceding your graduation, you are hereby honorably discharged from the 30th of June, 1883, with one year's sea-pay as prescribed by law for cadet-midshipmen, in accordance with the provisions of the act of Congress approved August 5, 1882."

From August 5, 1882, to June 30, 1883, the claimant was paid $769.86 for service in the Navy during that period. If paid during the same period as a graduated cadet-engineer he would have been entitled to receive $796.71.

Since then the claimant has received no pay and has been held by the Navy Department and the accounting officers of the Treasury to be out of the naval service.

After leaving the Academy, the claimant and all his classmates were classified on the official Navy Register, issued in July, 1881, as having "graduated"; and up to August 5, 1882, they were regularly paid as such at the rates prescribed by section 1556 of the Revised Statutes, viz: $1,000 at sea, $800 on shore duty, and $600 on leave or waiting orders. In the same manner the cadet-engineers who completed their four years' course in 1878, 1879, and 1880 were all regularly classified in the succeeding Navy Registers as having graduated in those years respectively; and prior to August 5, 1882, they were all uniformly paid as such.

The regulations prescribing the qualifications for appointment of cadet-engineers fixed a higher average age by two years for cadet-engineers entering the Academy than was required by law for cadet-midshipmen so entering. After completing the four years' course, cadet-engineers were permanently detached from the Academy, and were never required to return to that institution. They remained in active service at sea, or upon other duty, two or three years, or longer, until vacancies occurred in the grade of assistant engineer, when they were ordered singly or in groups for examination for promotion, under the provisions of section 1392 of the Revised Statutes, before a board of engineer officers, which held its sessions at Philadelphia.

The last two years of the academic course of cadet-midshipmen were spent "at sea in other than practice ships." After four years at the Academy they were temporarily detached from that institution by orders from the Navy Department, and were sent to sea singly or in squads. On shipboard they performed such active duties as were assigned to them. At the end of the two years they were required to return and did return to the Naval Academy, where they were subjected to a "final graduating examination" before the academic board. If successful at such examination, they received appointments as midshipmen, and were thereafter classified in the Navy Register as having "graduated" at that date, and they were never so designated either in the Navy Register or elsewhere until after they had passed such examination at the end of the six years' course.

The provisions of the act of August 5, 1882, being the naval appropriation act (22 Stats., 284, ch. 391), which apply to the case, are as follows:

"For the pay of the Navy, for the active list, namely: * * * Sixty-nine chief engineers, one hundred passed assistant engineers, thirty-five assistant engineers, seventy-three cadet-engineers (graduates) * * * one hundred and two cadet-engineers, one hundred and thirty cadet-midshipmen (not graduates); in all, four million forty-eight thousand three hundred dollars: *Provided*, That hereafter there shall be no appointments of cadet-midshipmen or cadet engineers at the Naval Academy, but in lieu thereof naval cadets shall be appointed from each Congressional district and at large, as now provided by law for cadet-midshipmen, and all the undergraduates at

ıe Naval Academy shall hereafter be designated and called 'naval cadets.' And om those who successfully complete the six years' course, appointments shall here-ter be made as it is necessary to fill vacancies in the lower grades of the line, and ngineer Corps of the Navy and of the Marine Corps: *And provided further*, That no eater number of appointments into these grades shall be made each year than shall ual the number of vacancies which has occurred in the same grades during the eceding year; and such appointments to be made from the graduates of the year, the conclusion of their six years' course in the order of merit, as determined by the cademic Board of the Naval Academy, the assignment to the various corps to be made the Secretary of the Navy, upon the recommendation of the Academic Board. But othing herein contained shall reduce the number of appointments from such gradu-es below ten each year, nor deprive of such appointment any graduate who may omplete the six years' course during the year eighteen hundred and eighty-two. And there be a surplus of graduates, those who do not receive such appointment shall given a certificate of graduation, an honorable discharge, and one year's sea pay, now provided by law for cadet-midshipmen. * * *

"That the pay of naval cadets shall be that now allowed by law to cadet-midship-en, and as much of the money hereby appropriated as may be necessary during the scal year ending June thirtieth, eighteen hundred and eighty-three, shall be ex-ended for that purpose. * * *

"That no officer now in the service shall be reduced in rank or deprived of his com-ission by reason of any provision of this act reducing the number of officers in the everal staff corps: *Provided*, That no further appointments of cadet-engineers shall e made by the Secretary of the Navy under section three of the act of eighteen hun-red and seventy-four."

The Court of Claims, following its previous decision in the case of Leopold *v.* nited States (18 C. Cls., 546) affirmed the following propositions of law:

"(1) Cadet-engineers who had finished their four years' course at the Naval Acad-ny, passed their final academic examinations, and received their diplomas before ıe passage of the act of August 5, 1882 (22 Stat., 285), became graduates, and are not ıade naval cadets by that act. They are therefore entitled to pay provided by the evised Statutes, section 1556, page 268. (2) The provision in the act of August 5, 882, for the discharge of surplus naval cadet graduates is prospective only, and does ot apply to the classes of 1881 and 1882."

Judgment was accordingly rendered in favor of the claimant, from which this ap-eal is prosecuted by the United States.

[January 24, 1886.]

Mr. Justice Mathews delivered the opinion of the court:

In order to understand the operation of the act of August 5, 1882, upon the status cadet-engineers, at the time it took effect, it will be necessary to consider what ıat was, according to laws then in force. That class or grade in the naval service wes its origin to provisions of law, now contained in the Revised Statutes, as fol-ows:

"SEC. 1522. The Secretary of the Navy is authorized to make provision, by regu-ıtions issued by him, for educating at the Naval Academy, as naval constructors or team-engineers, such midshipmen, and others, as may show a peculiar aptitude there-or. He may, for this purpose, form a separate class at the Academy, to be styled adet-engineers, or otherwise afford to such persons all proper facilities for such a cientific mechanical education as will fit them for said professions.

"SEC. 1523. Cadet-engineers shall be appointed by the Secretary of the Navy. hey shall not at any time exceed fifty in number [reduced to twenty-five by act of une 22, 1874, sec. 3, Sup. R. S., 83], and no person, other than midshipmen, shall be ligible for appointment unless they shall first produce satisfactory evidence of me-hanical skill and proficiency, and shall have passed an examination as to their men-al and physical qualifications.

"SEC. 1524. The course of cadet-engineers shall be four years, including two years f service on naval steamers. [By the act of February 24, 1874, Sup. R. S., 6, this rovision was changed so as to require the course of instruction at the Naval Acad-my for cadet-engineers to be four years, instead of two, but not dispensing with the dditional two years' service on naval steamers.]

"SEC. 1525. Cadet-engineers shall be examined from time to time, according to reg-lations prescribed by the Secretary of the Navy, and if found deficient at any exam-ination, or if dismissed for misconduct, they shall not be continued in the Academy r in the service except upon the recommendation of the Academic Board."

By sec. 1394, R. S., it was provided that "cadet-engineers who are graduated with redit in the scientific and mechanical class of the Naval Academy may, upon the ecommendation of the Academic Board, be appointed by the President, and con-

firmed by the Senate, as second assistant engineers;" but by sec. 1392 no person could be so appointed until after he had been found qualified by a board of competent engineers and medical officers designated by the Secretary of the Navy. By sec. 1556, R. S., the pay of cadet-engineers was, "before the final academic examination, five hundred dollars; after final academic examination and until warranted as assistant engineers, when on duty at sea, one thousand dollars; on shore duty, eight hundred dollars; on leave or waiting orders, six hundred dollars.

At the same time the students at the Naval Academy, styled cadet-midshipmen, were required to take an academic course of six years (sec. 1520 R. S.), when, having passed successfully the graduating examination at the Academy, they were entitled to receive appointments as midshipmen (sec. 1521 R. S.). The pay of cadet-midshipmen was five hundred dollars; for midshipmen, after graduation, when at sea, one thousand dollars; on shore duty, eight hundred dollars; on leave or waiting orders, six hundred dollars (sec. 1556 R. S.). By the act of March 3, 1877 (Sup. R. S., 294), cadet-midshipmen, "during such period of their course of instruction as they shall be at sea in other than practice-ships, are entitled to receive, as annual pay, nine hundred and fifty dollars."

It is contended on the part of the Government, in opposition to the conclusions of the Court of Claims that the act of August 5, 1882, when it took effect, converted all cadet-engineers who had not completed their six years' course during that year into naval cadets, all other cadet-engineers being regarded as graduates; and that those who were not at that time graduates in that sense were subject to the provisions of the act in regard to pay and discharge.

The controversy would seem to turn on the meaning to be given to the word "graduates" as used in this act of Congress.

It is certain that the act divides all who, at the date when it took effect, were known as cadet-engineers, into two classes—graduates and not graduates. Prior to that date a cadet-engineer might be pursuing the four years' course of study at the Academy, or the two additional years of service on board a naval steamer, or, having successfully passed both periods, might be waiting promotion to the grade of assistant engineer.

It is found as a fact by the Court of Claims that, before the passage of the act, cadet-engineers who had successfully passed their examination at the end of the four years' course of study at the Academy were called and considered graduates. The seventy-three cadet-engineers, styled graduates, for whose pay the act of August 5, 1882, makes appropriation, include all of that description, and, among them, the appellee in this case, while the one hundred and two cadet-engineers styled in the same act "not graduates," are those who at that date were still at the Academy pursuing their four years' course. This classification was followed by the Navy Department in the Navy Register. The naval appropriation act of March 3, 1883 (22 Stats., 472, ch. 97), provides for the pay of sixty-two cadet-engineers, which it is not denied is the exact number of cadet-engineers who had graduated at the Academy, but were not yet eligible to promotion, or whose promotion had been delayed, and includes the classes who completed their four years' course in 1880, 1881, and 1882. The same act appropriates for the pay of three hundred and thirty-five naval cadets, being presumably the whole number of the "under-graduates" referred to in the act of August 5, 1882.

This would seem to settle the meaning of the words, according to the sense adjudged by the Court of Claims, unless some other meaning is required to be attached to them by other and controlling provisions of the same act. It is argued by the Assistant Attorney-General that a consistent reading of the entire context does in fact require such other meaning to be given to the word "graduates" and "not graduates."

In support of this conclusion our attention is called to the provisos of the act, whereby it is enacted that appointments to fill vacancies in the lower grades of the line and the Engineer Corps, and of the Marine Corps, shall be thereafter made only from those who successfully complete a six years' course as naval cadets; that no appointments into these grades shall be made each year, except to fill vacancies therein which occurred during the preceding year; that such appointments are to be made only from the graduates of the year at the conclusion of their six years' course; that the exception made, that a graduate who completed his six years' course during the year 1882 shall not be deprived of his appointment, carries with it the implication that those who had not completed a six years' course at that time were included in the rule of exclusion; and that the surplus of graduates not receiving such appointment are therefore subject to discharge from the service, on graduation, with one year's sea-pay, in the language of the act "as now provided by law for cadet-midshipmen." No similar provision of law then in force relating to cadet-midshipmen, however, appears, and the reference is without application. Such a provision did exist in reference to the appointment of graduates of the Military Academy as second lieutenants of the Army, and the discharge of supernumeraries after July 1, 1882, by

virtue of section 3 of the act making appropriations for the support of the Military Academy, approved June 11, 1878 (Sup. R. S., 346), but no such legislation in regard to cadet-midshipmen is to be found in force at the date of the act of August 5, 1882. This, however, is not important, as nothing depends on the accuracy of this reference.

The general purpose of this act is quite apparent. One main object was to abolish the distinctions previously made by law between cadet engineers and cadet-midshipmen, and for the future to merge both classes in the new designation of naval cadets. The previous differences between them grew out of separate provisions as to their number, their manner of appointment, their course and term of study, and their pay after their four years' course at the Academy. Another principal purpose of the act was to prevent the increase of the number of officers in the Navy, by providing for the annual discharge from the service of all graduates of the year not needed to fill vacancies, in the grade to which they were eligible for promotion, actually existing at the time of their graduation. But this was to be accomplished consistently with the declaration of the act, "that no officer now in the service shall be reduced in rank or deprived of his commission by reason of any provision of this act reducing the number of officers in the several staff corps." And to this end the whole scheme of reform embodied in the legislation was made prospective.

Its express language is, that no appointments of cadet-midshipmen or cadet-engineers shall be made hereafter; that all the undergraduates of the Naval Academy shall hereafter be designated and called "naval cadets"; that from those, that is, those now called naval cadets, who successfully complete their six years' course, appointments shall hereafter be made as it is necessary to fill vacancies in the lower grades of the line, and Engineer Corps of the Navy and of the Marine Corps. But none of these provisions touch the case of the cadet-engineer who has already graduated at the date of the act, that is, who had at that time successfully completed his four years' course of study at the Academy and was serving on board a naval steamer. And the further provisions limiting the number of appointments to the number of vacancies occurring during the preceding year, and providing for the discharge of the surplus graduates, equally refer to those who become graduates after the year 1882, under this act, which now requires for graduation a full course of six years for all naval cadets, including the two years of service on board a naval steamer, which before had constituted the service of a cadet-engineer after graduation. This leaves the state and condition of cadet-engineers, who at the date of the passage of the act were already graduates according to the law as it then stood, unchanged, and to this class the appellee belonged. He is therefore entitled to the pay claimed and withheld, and the judgment of the Court of Claims in his favor is therefore affirmed.

[Supreme Court of the United States. No. 986. October term, 1885. The United States, appellant, vs. Lyman B. Perkins. Appeal from the Court of Claims. January 25, 1886.]

Mr. Justice Matthews delivered the opinion of the court:

The object of this suit was to recover $100 as the salary of the plaintiff as a cadet-engineer of the Navy from June 30, 1883, to September 1, 1883, at the rate of $600 per year, as provided by section 1556, Revised Statutes. Judgment was rendered in his favor for that amount.

The plaintiff entered the Naval Academy as a cadet-engineer in 1877, and graduated therefrom on June 10, 1881. On June 26, 1883, he received a letter from the Secretary of the Navy giving him notice that, as he was not required to fill any vacancy in the naval service happening during the preceding year, he was thereby honorably discharged from the 30th of June, 1883, with one year's sea-pay, as prescribed by law for cadet-midshipmen, in accordance with the provisions of the act of Congress approved August 5, 1882.

He protested against this order as illegal and refused the pay, and, regarding himself as continuing in the service, he sued for his pay subsequently accruing.

The case differs from that of Redgrave, just decided, in one particular only, that the claim is for pay after the alleged discharge.

The single question now raised as to that point is, that, although the discharge may not be justified by the act of August 5, 1882, the Secretary of the Navy, irrespective of that act, had lawful power to discharge him from the service at will. This authority is claimed on the ground that the plaintiff was not an officer in the naval service within the meaning of section 1229, Revised Statutes, which provides that "no officer in the military or naval service shall in time of peace be dismissed from service except upon and in pursuance of the sentence of a court-martial to that effect or in commutation thereof": and that consequently the right to remove and discharge him from the public service is implied in the power of appointment.

In reply to this position, the Court of Claims, in its opinion in this case, said:

"In this view we cannot concur. That a cadet-engineer like the claimant was a graduate and in the naval service we have already decided; that he was an officer is made manifest by the terms of the Constitution, which provides that 'Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of Departments.' Congress has by express enactment vested the appointment of cadet-engineers in the Secretary of the Navy, and when thus appointed they become officers and not employés. (*United States* v. *Germaine*, 99 U. S., 508; *Moore* v. *United States*, 95 U. S., 760; *United States* v. *Hartwell*, 6 Wall., 385.)

"It is further urged that this restriction of the power of removal is an infringement upon the constitutional prerogative of the Executive, and so of no force, but absolutely void. Whether or not Congress can restrict the power of removal incident to the power of appointment of those officers who are appointed by the President by and with the advice and consent of the Senate under the authority of the Constitution (article 2, section 2) does not arise in this case, and need not be considered.

"We have no doubt that when Congress, by law, vests the appointment of inferior officers in the heads of Departments it may limit and restrict the power of removal as it deems best for the public interest. The constitutional authority in Congress to thus vest the appointment implies authority to limit, restrict, and regulate the removal by such laws as Congress may enact in relation to the officers so appointed.

"The head of a Department has no constitutional prerogative of appointment to offices independently of the legislation of Congress, and by such legislation he must be governed, not only in making appointments, but in all that is incident thereto.

"It follows that as the claimant was not found deficient at any examination, and was not dismissed for misconduct under the provisions of Revised Statutes, section 1525, nor upon and in pursuance of the sentence of a court-martial to that effect or in commutation thereof, according to Revised Statutes, section 1229, he is still in office and is entitled to the pay attached to the same."

We adopt these views, and affirm the judgment of the Court of Claims.

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49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 76.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1886.—Ordered to lie on the table and be printed.

Mr. MORGAN submitted the following

RESOLUTION:

Whereas a majority of the Committee on the Judiciary have originated and reported to the Senate and recommend the adoption of the following resolution:

Resolved, That the Senate hereby expresses its condemnation of the refusal of the Attorney-General, under whatever influence, to send to the Senate copies of papers called for by its resolution of the 25th of January and set forth in the report of the Committee on the Judiciary as in violation of his official duty and subversive of the fundamental principles of the Government and of a good administration thereof:

and

Whereas the Senate, if said resolution is adopted as being true upon the facts and as matter of law, will thereby announce the prejudgment of a majority of this body, without any trial according to law, that the Attorney-General of the United States is guilty of and condemned for having willfully committed an offense in the conduct of his office which is in violation of his official duty and is subversive of the fundamental principles of the Government of the United States; and

Whereas the Attorney-General, if he has in fact willfully committed any offense that is in violation of his official duty and is subversive of the fundamental principles of the Government of the United States, is only amenable to the condemnation of the Senate when the Senate is sitting, with the Chief-Justice of the United States, as a court of impeachment to hear and decide upon articles of impeachment presented by the House of Representatives; and

Whereas it is alleged that the Senate has no rightful authority to cause the Attorney-General of the United States to be arrested, tried, and punished for a contempt of its authority and dignity, if the Senate shall declare that such contempt has been committed by him, upon the facts stated and the averments made in said resolution and in the report which accompanies the same; and

Whereas the Senate would be exposed to just censure if they, in the manner recommended by the Committee on the Judiciary, proceed to announce their judgment of condemnation against the Attorney-General of the United States upon an accusation that includes an offense which is punishable by impeachment; and

Whereas the Senate would also be exposed to just censure if it should attempt to declare the Attorney-General to be in contempt of its authority, and to pass judgment of condemnation against him for such contempt without having him notified of the charge and arraigned to answer the same at the bar of the Senate:

Resolved, That the Committee on Privileges and Elections be instructed to inquire into and report upon the question whether the

offense alleged against the Attorney-General of the United in said resolution is of the class of offenses for which the head of a Department may be impeached and removed from office, and whether the Senate can take jurisdiction of said alleged offense in the manner provided for in said resolution, and can proceed to convict and condemn the Attorney-General in advance of a trial, for said alleged offense, by a resolution of the Senate, there being no impeachment of said officer in the mode required by the Constitution.

2. That said committee be instructed to further inquire and report whether the Senate has the power under the law, and the rules adopted for its government, to arrest, try, convict, and punish the Attorney-General of the United States for a contempt of its rightful authority.

3. That said committee be further instructed to inquire and report whether the matters stated and referred to in the manner set forth in the resolution reported from the Committee on the Judiciary above copied constitute any crime or any misdemeanor in office under any law of the United States; and, if so, what penalty is annexed to said crime or misdemeanor, and what tribunal has the rightful jurisdiction to try and, on conviction, to condemn the Attorney-General of the United States to punishment for the same.

4. That said committee be further instructed to consider, ascertain, and report whether in the conduct of the Attorney-General, as stated in the resolution reported from the Committee on the Judiciary, and in the accompanying report, he violated any and what law of the United States, and in what respect he has violated said law; and whether he has done any and what act, in his conduct of the business of his office to which said resolution relates, that he might not have done in the exercise of his lawful discretion.

5. That said committee be further instructed to inquire and report whether the Senate has any constitutional right or power to give its advice and consent to removals from office by the President, and whether, by withholding such advice and consent, the Senate can prevent the removal of any person from office by the President.

6. That said committee inquire and report whether the Senate, if a majority shall agree to the resolution above recited (which was reported from the Committee on the Judiciary), has the right, under the Constitution, to withhold its consent to the removal of persons by the President who are unfit for office, under the circumstances mentioned in said report of the Committee on the Judiciary and in the resolutions reported by said committee; and whether the Senate can bind its members by any declaration of the duty of the Senate, or by any rule as a duty to the Senate, as the same is declared in the following resolution touching the powers and proper conduct of the Senate, which was also reported by the Committee on the Judiciary, viz:

Resolved, That it is, under these circumstances, the duty of the Senate to refuse its advice and consent to proposed removals of officers the documents and papers in reference to the supposed official or personal misconduct of whom are withheld by the Executive or any head of a Department when deemed necessary by the Senate and called for in considering the matter.

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49TH CONGRESS. 1st Session. | SENATE. | MIS. DOC. No. 77.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1886.—Ordered to be printed.

Mr. FRYE, from the Committee on Foreign Relations, presented the following:

[To accompany S. Res. 48.]

DEPARTMENT OF STATE,
Washington, February 9, 1886.

SIR: At the instance of the Secretary of the Navy, I have the honor to invite the action of Congress on the request of Rear-Admiral J. W. A. Nicholson, United States Navy, retired, to be authorized to accept from the King of Sweden and Norway a gold medal with an inscription thanking him for services to the consul-general of his Government in Egypt, during the bombardment of Alexandria, in July, 1882.

Reference is made to S. R. 30, Forty-eighth Congress, first session.

I have the honor to be, sir, your obedient servant,

T. F. BAYARD.

Hon. JOHN F. MILLER, &c.,
Committee on Foreign Relations, Senate.

DEPARTMENT OF STATE,
Washington, January 8, 1884.

SIR: I have the honor to transmit herewith for the information and consideration of your committee a copy of a letter to this Department from the Secretary of the Navy, in regard to certain decorations and presents therein described which have been tendered to officers of the Navy by foreign Governments and deposited in this Department pursuant to the provisions of the third section of the act of Congress, approved January 31, 1881.

I respectfully recommend that permission be granted to the several officers named in Mr. Chandler's letter to accept the presents and decorations which have been tendered to them, respectively, subject to the provisions of the second section of the above-mentioned act of Congress.

I have the honor to be, sir, your obedient servant,

FRED'K T. FRELINGHUYSEN.

Hon. JOHN F. MILLER,
Chairman of the Committee on Foreign Relations, Senate.

NAVY DEPARTMENT,
Washington, October 10, 1883.

SIR: Referring to the letters of the Department of State, dated January 4, 10, and 11, April 3 and September 13, 1883, with regard to certain decorations and presents tendered officers of the United States Navy by foreign Governments, I beg leave to inclose herewith a list of the officers upon whom presents or decorations have been conferred, and to ask that such steps may be taken as may seem to you expedient for obtaining the authority of Congress for their acceptance by the officers named.

I have, &c.,

WM. E. CHANDLER,
Secretary of the Navy.

Hon. FREDERICK T. FRELINGHUYSEN,
Secretary of State.

List of officers of the United States Navy who have been tendered decorations or presents by foreign Governments.

Rear-Admiral J. W. A. Nicholson.—A gold medal, presented by the King of Sweden, for kindness and attention shown to Swedish subjects during the bombardment of Alexandria, Egypt, by the British.

Rear-Admiral R. W. Shufeldt.—A sword, Persian carpet, and other articles, presented by the Sultan of Zanzibar, during cruise of the Ticonderoga; presentation made after the custom of Oriental princes.

Rear-Admiral C. H. Baldwin.—A gold box, with a portrait of the Emperor of Russia set in diamonds, presented by the Emperor on the occasion of his coronation at Moscow.

Capt. George E. Belkmap.—Decoration of Knight Commander of the Royal Order of Kamehameha I, tendered by the King of the Hawaiian Islands, in recognition of his services in restoring order upon the occasion of a riot at Honolulu.

Capt. Henry Wilson and Commander Frederick Pearson.—Decorations of Knight Commander of the Royal Order of Kalakaua, tendered by the King of the Hawaiian Islands upon the occasion of his coronation.

Lieut. Charles A. Foster and Lieut. Jesse M. Roper.—Decorations of Knight Companion of the Royal Order of the Crown of Hawaii, tendered by the King of the Hawaiian Islands on the occasion of his coronation.

Commander P. H. Cooper, Lieut. Commander E. T. Strong, and Lieut. T. T. Wood.—Decorations of the Order of El Busto del Libertador, tendered by his Excellency the President of Venezuela on the occasion of their visit to Caracas.

Rear-Admiral George H. Cooper, Capt. R. F. Bradford, Lieut. B. F. Tilley, Lieut. W. S. Cowles, and Ensign R. T. Milligan.—Decorations of the Order of El Busto del Libertador, tendered by his Excellency the President of Venezuela upon the occasion of the unveiling of the statue of Washington at Caracas.

C.

49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 78.

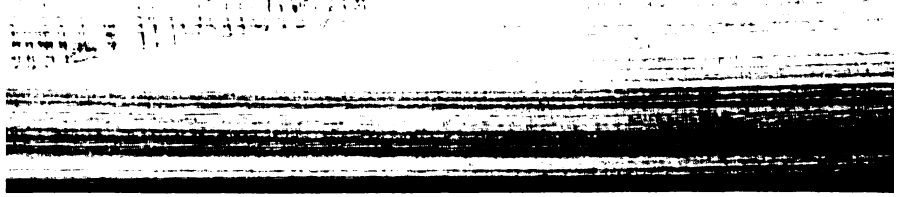
IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1886.—Laid on the table and ordered to be printed.

Mr. VANCE submitted the following

RESOLUTION:

Resolved, That the Committee on Civil Service Reform, to whom was referred Senate bill 839, to repeal an act approved January 16, 1883, entitled "An act to regulate and improve the civil service of the United States," be directed to report the same to the Senate forthwith, with such modifications or amendments as to said committee may seem proper.



49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 89.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1886.—Laid on the table and ordered to be printed.

The PRESIDENT PRO TEMPORE laid before the Senate the following letter from Elias Dewitt Huntley, Chaplain of the Senate:

UNITED STATES SENATE,
Washington, D. C., March 10, 1886.

Hon. JOHN SHERMAN,
President pro tempore of the Senate:

I hereby present my resignation as Chaplain of the United States Senate, the same to take effect Monday, March 15, 1886. My appointment as pastor of a church in another city necessitates this severing of relations which have been pleasant to me, and which I hope have not been altogether profitless to the Senate. Thanking you and all the members of the Senate for the uniform courtesy and kindness which have been extended to me during the period of my chaplaincy,

I am, very respectfully, your obedient servant.

ELIAS DEWITT HUNTLEY.

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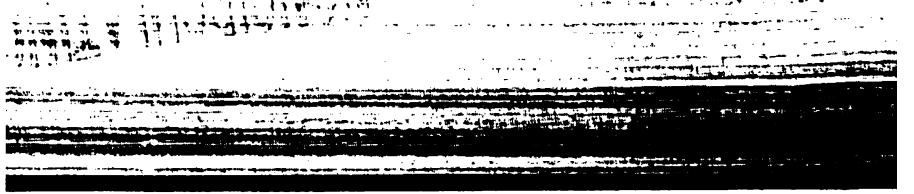

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 80.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1886.—Laid on the table and ordered to be printed.

The PRESIDENT PRO TEMPORE laid before the Senate the following letter from Elias Dewitt Huntley, Chaplain of the Senate:

UNITED STATES SENATE,
Washington, D. C., March 10, 1886.

Hon. JOHN SHERMAN,
President pro tempore of the Senate:

I hereby present my resignation as Chaplain of the United States Senate, the same to take effect Monday, March 15, 1886. My appointment as pastor of a church in another city necessitates this severing of relations which have been pleasant to me, and which I hope have not been altogether profitless to the Senate. Thanking you and all the members of the Senate for the uniform courtesy and kindness which have been extended to me during the period of my chaplaincy,

I am, very respectfully, your obedient servant,

ELIAS DEWITT HUNTLEY.

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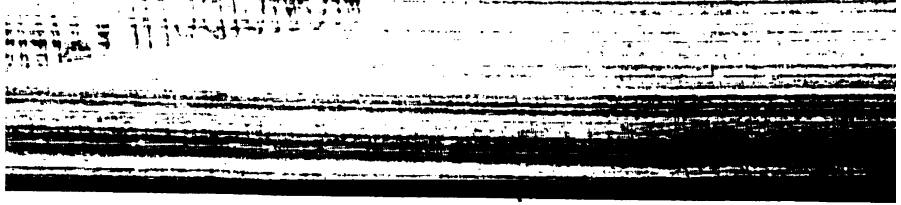


49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 81.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1886.—Laid on the table and ordered to be printed.

The PRESIDENT PRO TEMPORE laid before the Senate the following communication from the Sergeant-at-Arms:

SERGEANT-AT-ARMS' OFFICE,
United States Senate, March 10, 1886.

SIR: In compliance with the resolution of March 9, viz:

Whereas the following resolution was presented and passed on the 4th instant, to wit: That each Senator shall report to the Senate on Monday next the name of his private secretary; and

Whereas an amendment was offered, accepted, and prevailed, that said report should appear in the Record on Monday, March 8; and whereas but seventeen Senators report the names of their private secretaries: Therefore,

Resolved, That the Sergeant-at-Arms of the Senate be required to report to-morrow the names of the private secretaries of Senators who had certificates of appointment from his office on March 4, and the names of the Senators who had appointed them, other than those whose reports appear in the Record of this date.

I have the honor to transmit the accompanying statement.

Very respectfully, your obedient servant,

W. P. CANADAY,
Sergeant-at-Arms, United States Senate.

Hon. JOHN SHERMAN,
President pro tempore U. S. Senate.

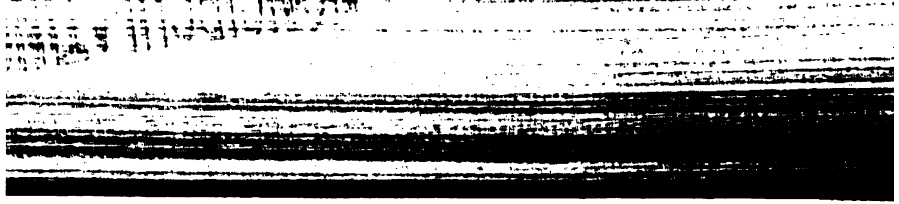
Statement under resolution of March 9, 1886.

Name of private secretary.	By whom appointed.	Name of private secretary.	By whom appointed.
John Irwin	Hon. J. H. Mitchell.	E. D. Martin	Hon. E. R. Wilson.
E. B. Wight	Hon. N. W. Aldrich.	M. G. Seckendorf	Hon. J. Chace.
P. S. George	Hon. J. Z. George.	M. S. Quay	Hon. J. D. Cameron.
R. M. Call	Hon. Wilkinson Call.	S. B. Long	Hon. S. B. Maxey.
R. M. Larner	Hon. A. P. Gorman.	F. P. Ferris	Hon. C. H. Van Wyck.
George Gilliland	Hon. D. W. Voorhees.	S. Hutchins	Hon. M. W. Ransom.
R. B. Green	Hon. Richard Coke.	R. B. Cooke	Hon. J. C. S. Blackburn.

Cards were issued to the above private secretaries under section 2, rule 33, of the Senate.

Very respectfully, your obedient servant,

W. P. CANADAY,
Sergeant-at-Arms, United States Senate.



:H CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 83.

IN THE SENATE OF THE UNITED STATES.

RCH 16, 1886.—Referred to the Committee on the District of Columbia and ordered to be printed.

THE WASHINGTON GAS-LIGHT COMPANY.

The PRESIDENT *pro tempore* laid before the Senate the following let- from John C. Poor, treasurer of the Washington Gas-Light Company, nsmitting certain information called for by Senate resolution of March 1886:

[Office of the Washington Gas-Light Company, 411 and 413 Tenth street northwest.]

WASHINGTON, D. C., *March* 16, 1886.

IR: I have the honor to inclose herewith the information called for the resolution of the United States Senate of March 3, 1886.

I remain your obedient servant,

JOHN C. POOR,
Treasurer.

Ion. JOHN SHERMAN,
President of the United States Senate.

WASHINGTON, D. C., *March* 16, 1886.

n response to the interrogatories of the Senate of the United States embraced in the resolution of March 3, 1886, the Washington Gas- ght Company submits the following:

I. The capital stock of the company is $2,000,000.

II. The following dividends have been paid since January 1, 1881: bruary, 1881, 5 per cent.; August, 1881, 5 per cent.; February, 1882, er cent.; August, 1882, 5 per cent.; February, 1883, 5 per cent.; May, 3, 40 per cent.; (the dividend of May, 1883, was the accumulation of rs when gas was selling at much higher rates); Auggust, 1883, 5 per t.; February, 1884, 5 per cent.; August, 1884, 5 per cent.; February, 5, 5 per cent.; May, 1885, 2½ per cent.; August, 1885, 2½ per cent.; vember, 1885, 2½ per cent.; February, 1886, 2½ per cent.

o other dividends in shares, scrip, or in any other manner whatso- r have been made.

III. Money has been invested in a Lowe patent apparatus for the nufacture of gas, tar-well, &c., to the amount of $45,780.89; coal ds, lime-house, boiler-house, stables, &c., to the amount of $80,344.56; wing and stoking machine, regenerative furnaces, scrubbers, &c., t $95,911.39; street mains, meters, &c., $173,305.74; lot E, square

No. 18, lots 4, 5, 6, and 7, in square 31, and square No. 1025 and south of square 1025, $42,136.35.

IV. Cash in hand, $78,189.97; invested in United States 4 per cent. loan, $25,000, which amount is held as security by sureties on bond of the Washington Gas-Light Company with the District of Columbia for faithful observance of contract for lighting the streets and avenues of the city.

JOHN C. POOR,
Treasurer.

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 84.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1886.—Referred to the Committee on Foreign Relations and ordered to be printed.

Mr. HOAR presented the following petition of John Arthur Lynch, for the survey of a line for a railway from the northwestern boundary of the United States through British Columbia to Alaska:

THE PETITION OF JOHN ARTHUR LYNCH, A CITIZEN OF THE UNITED STATES.

To the honorable Senate and the House of Representatives of the United States in Congress assembled:

Respectfully showeth and submitted for the consideration of your honorable body the following project of a public work which would be of great benefit to the United States, viz:

The construction of a railroad from the northwestern boundary of the United States through British America and the Territory of Alaska to a harbor on the coast thereof, there to be connected by steamships with Japan, North China, and the Asiatic Russian possessions, and by a line of railroad projected to be thence constructed by the Imperial Government of Russia, having connections with the Empire of China and Japan and British India, and by the Central Asiatic Russian system of railways with the entire system of European railroads.

The Government of Russia having caused surveys to be made for a line of railroad though its Asiatic territory to the city of Pekin, in China, and to the Yellow Sea, as also through Siberia and Manchooria to Nicholofski, on the inner Japanese Sea:

It is therefore respectfully submitted to your honorable Congress that it would be a work worthy of the great commercial interests of the United States, in connection with her trade with the rest of the continent of America and with Asia, to cause a survey to be made having in view the construction of a railroad from the northern boundary of the United States through British Columbia to Alaska and a commodious harbor therein on the Alaskan Peninsula, such survey to be made under the direction of the Secretary of War.

The great object to be obtained by the construction of such a road would be the facility it would afford to citizens of the United States to proceed to the interior of that great and valuable territory for the purpose of settlement and developing its great mineral resources, and engaging in agriculture and stock raising and other resources for industry and the profitable employment of our rapidly increasing population, and also by opening, as it would, direct commercial intercourse with the vast population of Asia.

It is respectfully submitted that, having in view the great natural obstacles that have been surmounted in the construction of the Pacific railroads, the construction of this projected road can also be suc-

cessfully carried forward, in support of which statement your petitioner respectfully refers to the opinion of the late Professor Joseph Henry, the eminent scientist, as expressed in his letter of the 28th May, 1874, to your petitioner, a copy whereof is hereto annexed.

The project of constructing the road through British Columbia has been favorably entertained by two of the respective lieutenant-governors of that province, as appears by their letters addressed to your petitioner, copies whereof are hereto also annexed.

The attention of your honors is respectfully invited to the fact that the several Governments of South America are gradually extending their railroad systems towards the north, the Argentine Republic and the Republic of Chili being now connected by a transandean railroad, and a line has also been built to the boundary of Bolivia by the Argentine Government, and the Bolivian Government has granted concessions for the construction of a connecting line north across her territory. Brazil and Venezuela and the United States of Colombia have also made some progress in railroad building in the same direction; Monte Video is connected by railroad with Asuncion, in Paraguay, and the several states of Central America are making efforts to develop their resources in the same direction. And since your petitioner first presented this subject to the consideration of your honors on the 15th of February, 1877, by petition, the Republic of Mexico has opened her territory to American railroad enterprise, thus affording evidence that the entire continent will, ere many years elapse, be connected from north to south by one grand through line of railroad intercommunication, and thus, by the construction of this projected road from the United States to Alaska, the commerce of this entire continent with Asia overland would pass through the United States.

As evidence of the practicability and feasibility of the construction of said road to Alaska, your petitioner also respectfully refers to the accompanying extract from the opinion of Admiral Cochran, of the English Navy, appointed by the English Government as a member of a board of officers to select a terminal port on the Pacific for the Canadian Pacific Railroad, wherein he states that in course of time the terminus of said railroad will be on Behring Straits. Such evidence from an experienced naval officer of high rank in a foreign service, and therefore entirely disinterested as regards the developing of the interests of the United States territory, is deserving of every consideration.

It is therefore respectfully submitted to your honorable Congress that the preliminary surveys leading to these great objects should be commenced at as early a period as practicable.

JOHN ARTHUR LYNCH.

WASHINGTON, D. C., *March* 15, 1886.

SMITHSONIAN INSTITUTION,
Washington, D. C., May 28, 1874.

DEAR SIR: The plan of connecting America and Europe, by a railway through Alaska and Siberia, is one of great magnificence and well worthy the attention of the statesmen and scientists of the world. Whatever tends to facilitate intercommunication of nations has an important bearing on the advance of civilization; nor, since the successful completion of the railway connecting New York and San Francisco, can your project be pronounced impossible. It is, however, an enterprise in which the co-operation of different nationalities is required, and for which the investment of a very large amount of capital is necessary.

Although the conception of such a project is worthy of approbation, still it is not sufficient. In order to bring the matter properly before the world, information must

be gathered as to the positive feasibility of the construction of the road, a plan of co-operation must be elaborated, and the means pointed out by which the requisite capital may be obtained.

A project of the kind of that in question requires time to grow in importance in the public mind, and for this purpose it is necessary that it be frequently agitated, and that individuals should devote themselves enthusiastically to the promotion of the work. It cannot be expected that success will be attained immediately, but what frequently appears at first as entirely chimerical is after a while received as of necessary and easy accomplishment.

I would therefore cheer you in your laudable intention of making this proposition the permanent object of your life, with the hope that in time the desired result will be accomplished, and your name be honorably associated with its history.

I am, very respectfully yours,

JOSEPH HENRY,
Secretary Smithsonian Institution.

JOHN ARTHUR LYNCH, Esq.,
Washington, D. C.

LIEUTENANT-GOVERNOR'S OFFICE,
British Columbia, July 12, 1875.

SIR: The lieutenant-governor directs me to acknowledge the receipt of your letter of the 21st ultimo, and its inclosure, upon the subject of the project you suggest for the construction of a railway from Washington Territory through British Columbia and Alaska to connect by steamers with the Russian possessions in Asia. I am to inform you that your suggestions will receive the consideration of the governor in council, especially as it refers to this province, and that a further communication will be addressed to you by the proper officer of this Government.

I have the honor to be, sir, your obedient servant,

G. RICHARD LAYTON,
Private Secretary.

JOHN ARTHUR LYNCH, Esq.,
Washington, D. C., United States of America.

GOVERNMENT HOUSE,
Victoria, B. C., March 15, 1884.

SIR: I have the honor to acknowledge the receipt of your letter of the 1st of March, with its inclosure of the bill to facilitate the settlement, &c., of Alaska, &c.

The road you propose to have made would be of great value to Alaska, and doubtless the Government of Canada and of the province of British Columbia would in every way in their power facilitate the carrying out of the work.

I have the honor to be, sir, your obedient servant,

CLEMENT I. CORNWALL,
Lieutenant-Governor, British Columbia.

JOHN ARTHUR LYNCH, Esq.,
Washington, D. C., United States of America.

Extract from the opinion of Admiral Cochran, of the English navy, as a member of a board of officers appointed by the British Government, to report upon the location of the Pacific terminus for the Canadian Pacific Railway.

I am of belief that the most advantageous site for the terminus is that of Burrard Inlet. When population has increased then the terminus will probably be transferred further to the northward, until, in my belief, it will eventually reach Behring Straits. * * * The climate of Queen Charlotte Islands is tempered by ocean currents, is mild, and their resources from agriculture, mining, and fisheries will at no distant date be an element of wealth to the Canadian Government. On my visit to the port of Netlah Catlah, adjacent to Alaska, I found a large and flourishing settlement of Indians; the soil was fertile and productive, the fisheries were highly remunerative, and the general and prospective prosperity of the colony all that could be expected. I mention these facts with a view to show that the climate is not hostile to emigration to the northward. (See pages 297 *et seq.*, Report of the Canadian Pacific Railroad (official), 1877.)

49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 85.

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1886.—Ordered to be printed.

Amendment intended to be proposed by Mr. Van Wyck to the resolutions reported from the Judiciary Committee relative to the refusal of the Attorney-General to furnish copies of papers called for by Senate resolution of January 25, 1886.

Amend by adding at the end of the second resolution "and in all such cases of removal the matter of confirmation shall be considered in open session of the Senate."

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 86.

IN THE SENATE OF THE UNITED STATES.

MARCH 22, 1886.—Ordered to be printed.

Mr. INGALLS submitted the following

RESOLUTION:

Resolved, That the Postmaster-General be directed to inform the Senate whether he received the resolution of March 4, calling for information as to the number of fourth-class postmasters removed in each of the States and Territories since March 4, 1885; and if said resolution has been received, why it has not been answered and when a response may be expected.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. [illegible]

IN THE SENATE OF THE UNITED STATES.

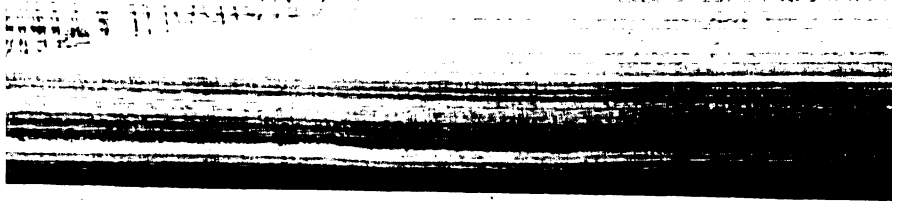
MARCH 22, 1886.—Laid on the table and ordered to be printed.

Mr. LOGAN submitted the following

RESOLUTION:

Resolved by the Senate of the United States, That the sessions of the Senate commonly known as executive sessions, so far as they apply to nominations, confirmations, or rejections, shall hereafter be held with open doors: and that a public record of the same shall be kept, the same as in legislative sessions.

O



49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 57, Part 2.

IN THE SENATE OF THE UNITED STATES.

MARCH 22, 1886.—Laid on the table and ordered to be printed.

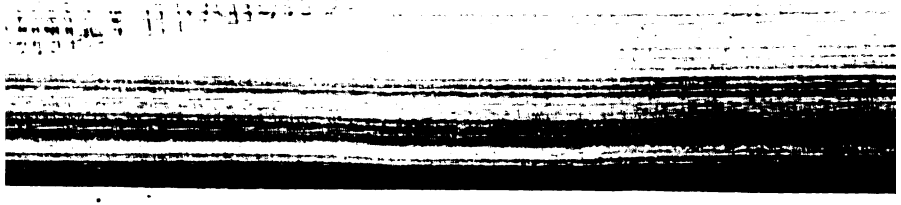
APRIL 12, 1886.—Ordered to be printed with the amendment proposed by Mr. Logan.

Mr. LOGAN submitted the following

RESOLUTION:

Resolved by the Senate of the United States, That the sessions of the Senate commonly known as executive sessions, so far as they apply to nominations, confirmations, or rejections, shall hereafter be held with open doors; and that a public record of the same shall be kept, the same as in legislative sessions.

At the end of the resolution add the following words: "And so much of section 2, Rule 36, and section 2, Rule 38, of the standing rules of the Senate as conflicts with or is inconsistent with the above is to the extent of such inconsistency rescinded."



49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 88.

IN THE SENATE OF THE UNITED STATES.

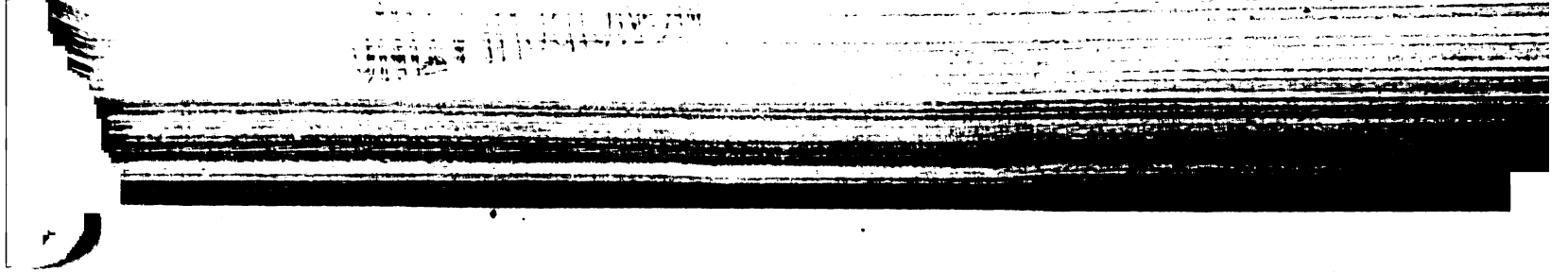
MARCH 23, 1886.—Ordered to be printed.

Mr. VAN WYCK submitted the following

RESOLUTION:

Resolved, That the Committee on Public Buildings and Grounds be directed to report a bill providing that the price of gas furnished by the Washington Gas Light Company shall not exceed one dollar per thousand cubic feet.

C



49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 89.

ANNUAL REPORT

OF THE

LIBRARIAN OF CONGRESS,

EXHIBITING

THE PROGRESS OF THE LIBRARY

DURING THE

CALENDAR YEAR 1885.

Resolved, That the Annual Report of the Librarian of Congress be printed, and that 500 additional copies, with covers, be printed for distribution by the Librarian.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1886.

ANNUAL REPORT

OF THE

LIBRARIAN OF CONGRESS.

LIBRARY OF CONGRESS,
Washington, March 15, 1886.

The Librarian presents herewith his annual report, embracing a summary of the recent increase of the collections of this Library, and of the business of the copyright department for the last calendar year, closing December 31, 1885.

The annual count of the books and pamphlets in the Library has again been a matter of much difficulty, because of the greatly increased overcrowding of the collections in every part. The following exhibits the result of the enumeration as made January 1, 1886:

Volumes of books	565,134
Pamphlets	191,000

Of this aggregate, the law department of the Library contains 66,284 volumes, of which 3,019 volumes have been added during the year.

The total increase during the year 1885 has been 20,447 volumes, from the following sources, respectively:

	Volumes.
From purchase	4,384
From copyright deposits	7,214
From deposit by the Smithsonian Institution	2,333
From exchanges	4,399
From donations	1,744
From increase of the Toner collection (presented)	183
Total	20,447

The copyright office continues to exhibit an increased business in all departments of publications entered for copyright. The aggregate entries during the calendar year 1885 numbered 28,411, as against 26,893 entries in 1884, being an increase of 1,518 entries. The fees received for copyright amounted to $23,293.60, being an increase of $1,520.60 over the preceding year.

The following summary exhibits the different classes and numbers of publications entered by their titles for copyright during 1885:

Number and designation of articles entered in 1885.

Books	9,986
Periodicals	6,060
Dramatic compositions	625
Musical compositions	6,808
Photographs	963
Engravings and chromos	1,396
Maps and charts	1,897
Prints	80
Designs	486
Paintings	94
Drawings	15
Total	28,410

The following is a statement of the aggregate number of each class of publications deposited in the Library, and the additions thus made to the collections by the copyright law:

Number of copyright publications received in 1885.

Books	14,428
Periodicals	12,938
Dramatic compositions	310
Musical compositions	12,883
Photographs	1,859
Engravings and chromos	2,638
Maps and charts	3,581
Prints	139
Designs and drawings	84
Total	48,860

The deposit of copies required by law to perfect the copyright being two of each publication, the net additions to the collections during the year numbered 24,430 distinct publications, of which 7,214 were books, and 6,469 were periodicals.

The following is a list of unexpended balances in the various funds appropriated for the Library on January 1, 1886:

Fund for increase of the Library	$8,904 02
Fund for works of art	10,234 22
Fund for contingent expenses of Library	1,304 07
Fund for printing and binding	4,118 15
Fund for purchase and printing of unpublished historical manuscripts relating to early French discoveries in America	3,160 04
Fund for preparing for publication the continuation of the American Archives	4,000 00

There have been added to the Library during the year continued files of many newspapers and periodicals, contributed by the Department of State and by the Bureau of Statistics and the Mint Bureau of the

Treasury Department. These and other contributions of books and pamphlets not needed by the special libraries of the Departments, while they conduce to the completeness and consequent value of the Library of the Government, add more and more to the urgent necessity for a new Library building.

THE TONER COLLECTION.

The liberal gift of his entire private library to the United States by Dr. J. M. Toner, of Washington, accepted by Congress in 1882, has been supplemented during the year 1885 by the presentation of 183 volumes of books and of 615 pamphlets, in addition to the accessions of previous years, noted in former annual reports. This is also in addition to the extensive and constantly-growing collection of manuscript material collected by the researches of the donor, devoted specially to the biography of Americans, and gathered from the widest available sources in books, newspapers, and periodicals and private correspondence.

INTERNATIONAL EXCHANGES.

Under various acts of Congress, beginning in 1867 and amended at later dates, there was set on foot a system of exchanges of the documents and other publications of the United States for those of foreign Governments. These acts make the Smithsonian Institution the agency of the Joint Committee on the Library for effecting these exchanges, and require that 50 copies of all documents of Congress and of every publication issued by any Department or Bureau of the Government shall be exchanged for such works published by foreign Governments as may be deemed by the Library Committee an equivalent, the fruits of such exchanges to be placed in the Library of Congress.

Under the authority of these acts the publications of the United States have been sent regularly each year to thirty-eight foreign Governments, whose officers responded favorably to overtures for regular exchanges. Very inadequate returns, however, have been received from some countries, while from others very rich and important stores of documents, including legal, political, historical, and scientific publications, have come to hand. A small appropriation of $1,000 has been annually made by Congress to defray the necessary expenses of these exchanges of Government publications. This has been quite inadequate to do more than to pay for clerical labor. Repeated efforts have been made by correspondence conducted with foreign Governments, through the Smithsonian Institution and the Department of State, to secure more adequate returns from the Governments to which the publications of the United States (an extensive and costly series) have been so liberally supplied through a long series of years. Very slight results, however, have attended these endeavors. A few desultory returns were occasionally received, followed by an entire stoppage

of the transmission of documents. The result of the exchanges thus has been to supply the Library with many publications of permane value and with many more fragmentary sets of laws, journals, repor and miscellaneous publications, the principal value of which to t collection depends upon the completeness of the series. The defici cies in all these series are very extensive, thus depriving Congress that full access to the current legislation and condition of foreign cou tries which is so important to those seeking official information there

It has long been apparent that no permanent improvement in the v defective operations of these international exchanges can be expect until some special agency is organized in Europe to give personal att tion to the practical business of securing full returns of all Governm publications. The distribution of documents is scattered in most G erunments among different bureaus, with no common head. Moreov most Government publications are issued by arrangement with priv publishing houses, instead of by Government presses, thus renderi the books to a partial extent publications to which a commercial val is attached, and complicating the question of exchange with that of pecuniary valuation of publications given and received. In very f countries is there any general law regulating this matter, while the rious international conferences held at Paris and at Brussels with a vi to the adoption of a uniform system of exchanges have failed to enl the co-operation of several of the most important European Gove ments. Moreover, there are issued many special publications which c be obtained only by special efforts. An agent of the United Sta either constantly upon the ground, or visiting periodically at regular tervals the bureaus of the Government in the various countries, su plied with full lists both of our wants and of the publications, regul and special, of the Government presses, would furnish a permanent a it may be added, the only efficient guarantee of realizing from the s tem of international exchanges what we have a right to expect.

An initiatory step was taken during the last Congress, when an age in the employ of the Smithsonian Institution, in charge of its exchan system, was sent toEurope, one-half of his expenses being paid by t Institution and one-half out of the Library funds. The results of t experiment, although a first attempt in a new field, were most grati ing. In the few months devoted to the labor, there were secured diligent effort, backed by the requisite official authority from the Sec tary of the Smithsonian Institution, the Department of State, and the brarian of Congress, very extensive returns of public documents and m cellaneous publications. These returns comprised forty-four cases and c hundred and sixty packages of books, numbering about 7,000 volumes, ceived in 1884–85, and were collected from the Governments of Gr Britain, France, Germany, Italy, Belgium, the Netherlands, Sweden, N way, Denmark, Hungary, Saxony, Wurtemberg, Bavaria, and Switz land, fourteen Governments in all. Vienna was also visited, but affa

were not in a state favorable to the success of negotiations, and no result was reached as to the publications of the Austrian Government. Several other Governments from which returns were thus secured, have also failed to continue sending the series of their parliamentary and other documents, the value of which is largely dependent upon their continuity.

The experience of years has amply proved the impossibility of securing any complete or adequate return from foreign Governments for the full and costly series of American Government publications so long furnished them, without direct and persistent effort, through an agency upon the ground, furnished with adequate credentials, to attend personally to the whole business. One of the chief benefits of the initial effort already made has been the discovery of the practical obstacles in the way of a thoroughly successful system of exchanges. These, it is believed, could be removed by following up the work with each Government, while, if neglected, or left to the very uncertain medium of correspondence, the United States will continue to reap very inadequate returns for our publications sent abroad. It is recommended that the Joint Committee on the Library consider the expediency of providing an appropriation to defray the necessary expenses of an agent of international exchanges, to be sent abroad for a term of at least six months during the present year.

It is also recommended that the act directing the printing of 50 copies of each publication ordered by any Department or Bureau, to be devoted to international exchanges, be so amended as to render its provisions more effective.

THE NEEDS OF THE LIBRARY.

It is a matter of much regret that the continuation of the printing of the new general catalogue of the Library has been long interrupted because of the engrossing and rapidly increasing business of the copyright department. This has so far developed as actually to involve the clerical labor of what might fairly be termed a bureau, absorbing more and more the time of my assistants, while the cataloguing and arrangement for prompt supply of all new additions to the Library, with the growing demands of Congress, of the various Departments and Bureaus, and of the public for books and information, leave no time for the preparation and printing of catalogues. An increase of the existing small Library force is earnestly recommended as necessary to prevent the current work of the Library and the copyright department from falling into arrears. The very numerous calls upon the Librarian for certified copies of records of copyright made in former years, often involving protracted searches into the earlier books of record of the United States district courts, consume much time, and often necessitate delay, that the pressing daily record of new copyrights may not be interrupted.

The past year has added greatly to the urgency of the long-felt nec sity for some relief to the overcrowded condition of the Library. extensive collections are continually growing more extensive, while increase of space, except by utilizing under great disadvantages crypts of the Capitol, has been provided. Even the latter tempor resource has now been exhausted, and the number of books wh must be piled upon the floors is constantly increased. The labor of Librarian and his assistants, and the time necessarily consumed in p ducing from widely separated divisions of the Library books wh would be carefully classified upon shelves were any shelves availa for that purpose, are made far greater by the long delay to provide ditional accommodations for the Library. A bill providing or a brary building, with ample space for present necessities and fut growth, has been twice passed by the Senate, but has failed to rece final consideration in the House of Representatives. Without here peating any of the numerous considerations urged in former rep in favor of this measure as demanded alike by the necessities of C gress and the public service, and required for the security and pre vation of the Government property, the undersigned here renews expression of the hope that the building will be provided for at present session of Congress.

AINSWORTH R. SPOFFORD,
Librarian of Congres

Hon. WILLIAM J. SEWELL,
Chairman of the Joint Committee on the Library.

49TH CONGRESS, 1st Session. } SENATE. { Mis. Doc. No. 100.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1886.—Ordered to be printed.

Mr. VAN WYCK submitted the following

RESOLUTION:

Resolved, That the Commissioners of the District of Columbia inform the Senate whether either of the said Commissioners is now stockholder or director or attorney of either of the street horse railways or national banks of the District of Columbia, or of the Washington Gas-Light Company. Also, if not now, whether heretofore either of them has been stockholder, director, or attorney of either of said corporations, and, if so, when he ceased to be such stockholder, director, or attorney as aforesaid.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 91.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1886.—Referred to the Committee on the District of Columbia and ordered to be printed.

LETTER

FROM

HON. D. K. CARTTER,

TRANSMITTING

Resolutions adopted at a meeting of citizens relative to the management of the public schools in the District of Columbia.

WASHINGTON, D. C., *March*, 29, 1886.

To the Senate and House of Representatives:

At a public meeting of representative citizens, held in pursuance of a public notice, for the purpose of considering the management of the public schools, and the proposed legislation respecting the same, the inclosed statement of views and conclusions was unanimously adopted. It indicates in brief my own views of the matter, and I think it fairly expresses the views and wishes of the great body of our people. As such expression I beg to bespeak for it a favorable consideration. I also inclose a copy of the call for the meeting and a report of its proceedings.

Very respectfully,

D. K. CARTTER,
Chairman.

To the honorable the Senate and House of Representatives:

GENTLEMEN: Pursuant to the following call:

Citizens interested in the public schools are requested to meet in the hall of the National Rifles' Armory, G street, between Ninth and Tenth, on Friday, March 26, at 8 o'clock p. m., to consider whether it is better in the future, as in the past, to intrust the management of the public schools to a board of citizens, specially selected for the purpose from residents of the several school divisions, than to the Board of Commissioners, and to take such action in the premises as shall be deemed proper.

(Signed by:) William M. Merrick, D. K. Cartter, M. G. Emery, W. D. Davidge, B. H. Warner, S. S. Henkle, Ellis Spear, William A. Gordon, H. O. Towles, John E. Norris, Simpson & Guy, Fred'k Douglass, Robert Reyburn, M. D., Samuel Fowler, John T. Given, C. M. Matthews, I. N. Burritt, and others.

A meeting of citizens was held, and the following resolution, to which your attention is respectfully invited, was adopted. I have the honor, also, to inclose a report of the proceedings of said meeting, as published in an evening newspaper of this city.

The committee on resolutions having returned, Mr. Fendall subm ted as its report the following:

That the chairman be requested to transmit to the two Houses Congress the following statement as the views and conclusions of t meeting:

(1) It is better to intrust the management of the public schools t board of citizens, specially selected for the purpose, than to the Co missioners. Since the organization of the first School Board in the D trict of Columbia, more than eighty years ago, by the election of Thom Jefferson, then President of the United States, as chairman, down the 30th day of December last, it has always been the usage to intr the management of the public schools to a committee of citizens, g erally called trustees, specially selected for the purpose. Under t usage the schools have been kept in sympathy with the people, a have come to be regarded by them as a most cherished institution. set aside this usage of three-quarters of a century and abolish the Sch Board as a governing body, and substitute therefor the Commissione is an experiment which is not called for now. On all sides the exc lence of the public schools is conceded, and by none more fully than the Commissioners and ex-Commissioners, as appears by their sta ments before committees of Congress; and it would therefore seem be the part of wisdom to continue the system under which this res has been reached.

(2) Local representation on the School Board according to the sch divisions has always been obligatory upon the appointing power, or been respected by it, except by the late Board of Commissioners, a this exception proved unsatisfactory. The members of the School Bo should continue to be selected from the residents of the several sch divisions.

(3) In a city of 200,000 inhabitants, having 30,000 children in the p lic schools, twenty-four school trustees is not a large number. M much smaller cities—Worcester, in Massachusetts, for instance—h each this number of trustees.

(4) The School Board should have the selection and appointmen all the officers, teachers, and janitors by which the schools are mana including the superintendents, and the approval of sites and plans school buildings, and should be required to communicate to the C missioners any information they may have touching expenditures school purposes, by approving or disapproving bills and accounts now provided by law.

(5) Senate bill No. 1238, known as the School Board bill, being a ification of existing laws and usages relating to the management of public schools, with such modifications as experience has shown t desirable, is hereby approved and its enactment recommended.

Respectfully submitted.

D. K. CARTTER,
Chairma

Attest:

JAMES C. DULIN,
Secretar

WASHINGTON, D. C., *March* 29, 1886.

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 92.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1886.—Referred to the Committee on Claims and ordered to be printed.

Amendment proposed by Mr. Harris to the resolution (Order of business No. 359) to refer the claim of C. B. Bryan & Co. to the Court of Claims.

Strike out the entire resolution and substitute therefor the following:

A BILL for the relief of C. B. Bryan & Co.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claim of C. B. Bryan & Co., for the value of a barge and lading of coal, alleged to have been destroyed by collision with the United States snag-boat R. E. DeRussy, in the year 1879, be referred to the Court of Claims for hearing and determination, in conformity to the rules and practice of said court.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 93.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1886.—Ordered to be printed.

Mr. GORMAN submitted the following

RESOLUTION:

Resolved, That the Secretary of the Interior be directed to furnish to the Senate the name of each person employed in receiving, folding, and distributing public documents, together with their compensation, and all other expenditures made on that account for the fiscal years 1883, 1884, and 1885.

O

49TH CONGRESS, 1ST SESSION. | SENATE. | MIS. DOC. No. 98

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1886.—Ordered to be printed.

Mr. GORMAN submitted the following

CONCURRENT RESOLUTION:

Resolved by the Senate, the House of Representatives concurring, That a joint select committee of three on the part of the Senate and five on the part of the House of Representatives be appointed to consider the subject of a celebration in 1889, in Washington, of the centennial anniversary of the inauguration of the Government under the Constitution of the United States; and also of the four hundred anniversary of the discovery of America in 1892, and to report what, if any, action by Congress is advisable in relation thereto.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 95.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1886.—Laid on the table and ordered to be printed.

Mr. MORGAN submitted the following

RESOLUTION:

Resolved, That the Committee on Finance be directed to inquire and report upon the following questions:

(1) Has Congress the power to lay a tax, in any form, on the capital stock of corporations in the United States and Territories and the District of Columbia?

(2) Is it just and expedient to levy such tax?

(3) Can such tax be imposed in the form of a license to such corporations to continue their business operations?

(4) What classes of corporations should be exempt from taxation?

Resolved, That said committee further inquire whether it is expedient to set apart the money to be derived from such taxation as a special fund for the payment of pensions; and if so, what percentage of taxation will raise a sum that will be adequate for that purpose.

O

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 96.

IN THE SENATE OF THE UNITED STATES.

APRIL 10, 1886.—Ordered to be printed.

Mr. MORGAN submitted the following

CONCURRENT RESOLUTION:

Whereas the following resolution was passed in the Senate on March 10, 1882, and in the House of Representatives on the 16th March, 1882:

Resolved by the Senate (the House of Representatives concurring), That the President be requested to bring to the attention of the Government of Nicaragua the necessity of arranging by a convention for final settlement of all unadjusted claims existing between the Government of the United States and the Government of Nicaragua and claims of citizens of the United States against the Government of Nicaragua.

And whereas no information has been given to Congress of any practical progress that has been made in the adjustment of the claims of the citizens of the United States against the Republic of Nicaragua:

Resolved by the Senate (the House of Representatives concurring), That the President of the United States be requested to bring this subject to the attention of the Government of Nicaragua, with a view to securing the prompt and full satisfaction of the just claims of the citizens of the United States against the Government of Nicaragua.

O

49TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 97.

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1886.—Ordered to be printed.

Mr. RIDDLEBERGER submitted the following

RESOLUTION:

Resolved, That all matters other than those relating to treaties shall be considered and acted upon by the Senate in open session.

49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 98.

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1886.—Considered, agreed to, and ordered to be printed.

Mr. MAXEY submitted the following

RESOLUTION:

Resolved, That the Committee on the Judiciary be, and is hereby, instructed to inquire into what legislation may be necessary in order to subject property removed from any State or Territory into the Indian Territory—that is to say, into the country occupied by the five civilized tribes—to forced sale, levy, and execution, upon a writ of execution or other proper writ issued upon a judgment or decree rendered by a court of competent jurisdiction to hear and determine between the parties to the suit.

2. What legislation may be necessary to subject property removed as aforesaid into the Indian Territory aforesaid to writ of attachment or other auxiliary writ duly issued by such court as aforesaid at the commencement of suit or pending the litigation.

And said committee is directed to report by bill or otherwise.

O